SUPREME COURT OF THE UNITED STATES.

No. ~~95.~~ # 15 10.

CHARLES BALLANCE, PLAINTIFF IN ERROR,

v.

JOSEPH L. PAPIN & NICHOLAS B. S. ELDRED

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

G. S. GIDEON, Printer, No. 511 Ninth Street, Washington, D. C.

SUPREME COURT OF THE UNITED STATES.

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United States of America, Northern District of Illinois.

Pleas in the Circuit Court of the United States for the Northern District of Illinois, held at the city of Chicago, in the district aforesaid, before the honorable John McLean, one of the justices of the Supreme Court of the United States, presiding, and the honorable Thomas Drummond, judge of the District Court of the United States for the Northern District of Illinois, associate; on Monday, the twenty-first day of July, in the year of our Lord one thousand eight hundred and fifty-six, and of our Independence the eighty-first year.

JOSEPH L. PAPIN and NICHOLAS B. S. ELDRED,
v.
JAMES RAMSAY. } Ejectment.

Be it remembered, that heretofore, to wit, on the 20th day of December, in the December Term, A. D. 1854, of the Circuit Court of the United States for the District of Illinois, came into court the said Joseph L. Papin and Nicholas B. S. Eldred, plaintiffs, by Messrs. Manning & Merriman, their attorneys, who filed in open court their declaration, notice, and affidavit of service, and also their bond for costs, in the above entitled cause, which are in the words and figures following, to wit:

United States of America, District and State of Illinois.

In the Circuit Court of the United States in and for the District and State of Illinois, of the December term, in the year of our Lord one thousand eight hundred and fifty-four, Joseph L. Papin, who is a citizen of the State of Missouri, and Nicholas B. S. Eldred, who is a citizen of the State of New York, both of the United States of America, plaintiffs in this suit, complain of James Ramsay, defendant in this suit, who is a citizen and inhabitant of the State of Illinois, in the United States of America, of a plea, wherefore he, the said defendant, with force, and arms, &c., entered into the following described premises: For that heretofore, to wit, on the first day of December, in the year of our Lord one thousand eight hundred and fifty-four, the said plaintiffs were possessed of certain premises, situated in the county of Peoria, in the said State of Illinois, and described as follows, to wit: That part of lot or claim fifty-one, in

the village of Peoria, confirmed to Hyppolite Maillet, by the confirmatory act of Congress, approved the third of March, A. D. 1823, entitled An act to confirm certain claims to lots in the village of Peoria, in the State of Illinois, as is covered by the northwesterly half of lot No. one in block No. forty-two, in Ballance's addition to the town of Peoria, so called, and laid out, and surveyed, on the southwest fractional quarter of section nine, in township eight north, in range eight east, of the fourth principal meridian, and being so possessed thereof, the said defendant afterwards, to wit, on the second day of December, in the year of our Lord one thousand eight hundred and fifty-four, entered into such premises, and that he unlawfully withhold from the plaintiffs the possession thereof; and said plaintiffs aver that they claim title to said premises in fee. And said plaintiffs further aver that the afore-described premises, being the mattter in dispute, exceed, exclusive of costs, the sum or value of five hundred dollars. Whereof said plaintiffs say that they are injured, and have sustained damages to a large amount, to wit, five hundred dollars; and therefore they sue, &c.

MANNING & MERRIMAN,
Attorneys for Plaintiffs.

To the above-named defendant. Take notice, that,

1. On the first day of the next term of the Circuit Court of the United States, within and for the District and State of Illinois, to be held at the city of Springfield, in said State of Illinois, on the 3d Monday of December, A.D. one thousand eight hundred and fifty-four, or as soon thereafter as counsel can be heard, a declaration, of which the above is a copy, will be filed in said court.

2. That upon filing the same, a rule will be entered requiring you, such defendant, to appear and plead to such declaration within twenty days after the entry of such rule.

3. That if you neglect so to appear and plead, a judgment by default will be entered against you, and the plaintiff will recover possession of the premises described in said declaration.

Yours, &c.,
MANNING & MERRIMAN,
Attorneys for Plaintiffs.

Dated December 4th, 1854.

State of Illinois, County of Peoria.

Alfred R. Kidwell, being first duly sworn, deposes and says, that he served a declaration and notice, of which the within and foregoing are copies, upon the within-named defendent, by delivering the same to him personally, on the twelfth day of December, A.D. 1854.

ALFRED R. KIDWELL.

Subscribed and sworn to, before me, this 16th day of December, A.D. 1854.

A. L. MERRIMAN,
U. S. Commissioner.

Indorsed: Filed Dec. 20th, 1854. Wm. Pope, clerk.

United States of America, State and District of Illinois.

Circuit Court, December Term, A.D. 1854.

Know all men by these presents, that I, A. L. Merriman, of the county of Peoria, and State and District of Illinois, am held and firmly bound unto James Ramsay, or to the officers of the Circuit Court of the United States for the District of Illinois, in the sum of five hundred dollars, to be paid to said Ramsay, or to the said officers aforesaid, their certain attorneys, heirs, executors, administrators, or assigns, or successors in office. To which payment, well and truly to be made, I do bind myself, my heirs, executors, and administrators, and every of them, jointly, severally, and firmly by these presents.

Witness my hand and seal, the 20th day of December, in the year of our Lord one thousand eight hundred and fifty-four. The condition of the above obligation is such, that, whereas Joseph L. Papin and Nicholas B. S. Eldred have this day, to wit, at the date of the above-written, instituted a suit in the said Circuit Court of the United States for the District of Illinois against James Ramsay. Now, if the said Merriman, heirs, executors, or administrators, shall well and truly discharge all costs that may accrue and be adjudged against him, the said plaintiff, in the prosecution of said suit, or shall well and truly discharge all costs that may accrue in their behalf, if judgment shall pass against the said defendant, and the costs, and fail to be collected of defendant, or all costs which may have accrued in failure of the prosecution of said suit to effect, then this obligation shall be void, otherwise of full force and effect.

A. L. MERRIMAN. [L. S.]

Indorsed: Filed this 20th day of Dec., A.D. 1854, Wm. Pope, clerk.

And on the same day, to wit, the 20th day of December, in the said December term, A.D. 1854, of said court, in the record of the proceedings thereof in said cause is the following entry, to wit:

JOSEPH L. PAPIN et al.
v.
JAMES RAMSAY. } Ejectment.

This day came the plaintiffs, by their attorneys, and filed the

declaration in ejectment herein, together with the notice in writing, hereto attached, and upon reading and filing an affidavit of a due service of a true copy of said declaration and notice upon said defendant, it is ordered, on motion of said plaintiff, by their said attorneys, that defendant plead herein in twenty days, or that his default be entered.

And afterwards, to wit, on the 12th day of January, A.D. 1855, in the December term, A.D. 1854, of said court, came into court, the said James Ramsay, defendant, by C. Ballance, his attorney, and filed his plea in the words and figures following, to wit:

United States of America, District of Illinois.

Circuit Court, Dec. Term, A.D. 1854.

JAMES RAMSAY
ads.
JOSEPH L. PAPIN et al. } In Ejectment.

Said defendant comes and defends the force and injury, when, &c., and says said plaintiffs actio non, because he says he is not guilty of the trespass and ejectment in said declaration charged against him, and of this he puts himself upon the country, &c.

C. BALLANCE,
For Deft.

Indorsed: Filed January 12th, 1855. Wm. Pope, clerk.

JOSEPH L. PAPIN, NICHOLAS B. S. ELDRED,
v.
NICHOLAS ERION. } Ejectment.

Be it remembered, that heretofore, to wit, on the 20th day of December, A.D. 1854, in the December term, A.D. 1854, of the Circuit Court of the United States for the District of Illinois, came into court the said Joseph L. Papin and Nicholas B. S. Eldred, plaintiffs, by Messrs. Manning and Merriman, their attorneys, who filed in open court ther declaration, notice, and affidavit of service, and also their bond for costs in the above entitled cause, which are in the words and figures following, to wit:

United States of America, District and State of Illinois, *ss.*

In the Circuit Court of the United States in and for the District and State of Illinois, of the December term, in the year of our Lord one thousand eight hundred and fifty-four. Joseph L. Papin, who is a citizen of the State of Missouri, and Nicholas B. S. Eldred, who

is a citizen of the State of New York, both of the United States of America, plaintiffs in this suit, complain of Nicholas Erion, defendant in this suit, who is a citizen and inhabitant of the State of Illinois, in the United States of America, of a plea, wherefore he, the said defendant, with force and arms, &c., entered into the following described premises: For that herctofore, to wit, on the first day of December, in the year of our Lord one thousand eight hundred and fifty-four, the said plaintiffs were possessed of certain premises situated in the county of Peoria, in the said State of Illinois, and described as follows, to wit: that part of lot or claim No. fifty-one, in the village of Peoria, confirmed to Hyppolite Maillet by the confirmatory act of Congress of third of March, A.D. 1823, entitled "An Act to confirm certain claims to lots in the village of Peoria, in the State of Illinois," as is covered by the northeasterly half of lot No. ten, in block No. forty-two, in Ballance's addition to the town of Peoria, so called, surveyed and laid out on fractional southwest quarter of section nine, in township eight north, in range eight east, of the 4th principal meridian; and being so possessed thereof, the said defendant afterwards, to wit, on the second day of December, in the year of our Lord one thousand eight hundred and fifty-four, entered into such premises, and that he unlawfully withhold from the plaintiffs the possession thereof; and said plaintiffs aver that he claim title to said premises in fee. And said plaintiffs further aver, that the afore-described premises, being the matter in dispute, exceed, exclusive of costs, the sum or value of five hundred dollars; whereof said plaintiffs say that they are injured, and have sustained damages to a large amount, to wit, five hundred dollars; and therefore they sue, &c.

MANNING & MERRIMAN,
Attorney for Plaintiffs.

To the above-named defendant. Take notice, that,

1. On the first day of the December term of the Circuit Court of the United States within and for the District and State of Illinois, to be held at the city of Springfield, in said State of Illinois, on the 3d Monday of December, A.D. one thousand eight hundred and fifty-four, or as soon thereafter as counsel can be heard, a declaration, of which the above is a copy, will be filed in said court.

2. That upon filing the same, a rule will be entered requiring you, such defendant, to appear and plead to such declaration within twenty days after the entry of such rule.

3. That if you neglect so to appear and plead, a judgment by default will be entered against you, and the plaintiff will recover possession of the premises described in said declaration.

Dated December 4th, 1854.

Yours, &c.,
MANNING & MERRIMAN,
Attorney for Plaintiffs.

State of Illinois, County of Peoria.

Alfred R. Kidwell, being first duly sworn, deposes and says, that he served a declaration and notice, of which the within and foregoing are copies, upon the within named defendant, by delivering the same to him personally, on the 12th day of December, A.D. 1854.

ALFRED R. KIDWELL.

Subscribed and sworn to before me, this 16th day of December, A.D. 1854.

A. L. MERRIMAN,
U. S. Commissioner.

Indorsed: Filed Dec. 20th, 1854. Wm. Pope, clerk.

United States of America, State and District of Iilinois.

December Term, A.D. 1854. Circuit Court.

Know all men by these presents, that I, A. L. Merriman, of the county of Peoria, and State and District of Illinois, am held and firmly bound unto Nicholas Erion, or to the officers of the Circuit Court of the United States for the District of Illinois, in the sum of five hundred dollars, to be paid to said Erion or to the said officers aforesaid, their certain attorneys, heirs, executors, administrators, or assigns, or successors in office, to which payment, well and truly to be made, I do bind myself, my heirs, executors, and administrators, and every of them, jointly, severally, and firmly by these presents. Witness my hand and seal, the 20th day of December, in the year of our Lord one thousand eight hundred and fifty-four. The condition of the above obligation is such, that whereas Joseph L. Papin and Nicholas B. S. Eldred have this day, to wit, at the date of the above written, instituted a suit in the said Circuit Court of the United States for the District of Illinois, against Nicholas Erion; now if the said Merriman, heirs, executors, or administrators shall well and truly discharge all costs that may accrue and be adjudged against him, the said plaintiff, in the prosecution of said suit, or shall well and truly discharge all costs that may accrue in their behalf, if judgment shall pass against the said defendant, and the costs, and fail to be collected of defendant, or all costs which may have accrued in failure of the prosecution of said suit to effect, then this obligation shall be void, otherwise of full force and effect.

A. L. MERRIMAN. [L. S.]

Indorsed: Filed this 20th day of December, A.D. 1854. Wm. Pope, clerk.

And on the same day, to wit, the 20th day of December, A.D. 1854, in the record of the proceedings of the said court in the above entitled cause, is the following entry, to wit:

JOSEPH L. PAPIN et al.
v.
NICHOLAS ERION. } Ejectment.

This day came the plaintiffs, by their attorneys, and filed their declaration in ejectment herein, together with the notice in writing thereto attached; and upon reading and filing an affidavit of a due service of a true copy of said declaration and notice upon said defendant, it is ordered, on motion of said plaintiffs, by their said attorneys, that defendant plead thereto in twenty days, or that his default be entered.

And afterwards, to wit, on the 12th day of January, A.D. 1855, in the December term, A.D. 1854, of said court, came the said Nicholas Erion, defendant, by C. Ballance, his attorney, and filed in said court his plea in the above entitled cause, in the words and figures following, to wit:

United States of America, District of Illinois.

In the Circuit Court of the December Term, 1854.

NICHOLAS ERION,
ads.
JOSEPH L. PAPIN. } In Ejectment.

Said defendant comes and defends the force and injury, when, &c., and says he is not guilty of the force and ejectment in said declaration charged to him. And of this he puts himself upon the conntry, &c.

C. BALLANCE,
For Defendant.

Indorsed: Filed January 12th, 1855. Wm. Pope, clerk.

JOSEPH L. PAPIN, NICHOLAS B. S. ELDRED,
v.
GEORGE HEPPLER. } Ejectment.

Be it remembered, that heretofore, to wit, on the 20th day of December, in the December term, A.D. 1854, of the Circuit Court of the United States for the District of Illinois, came into court the said Joseph L. Papin and Nicholas B. S. Eldred, plaintiffs, by Messrs. Manning and Merriman, their attorneys, who filed in open court their declaration, notice, and certificate of service, and also

their bond for costs, which are in the words and figures following, to wit:

United States of America, District and State of Illinois.

In the Circuit Court of the United States, of the December term, in the year of our Lord one thousand eight hundred and fifty-four, Joseph L. Papin, who is a citizen of the State of Missouri, and Nicholas B. S. Eldred, who is a citizen of the State of New York, both of the United States of America, plaintiffs in this suit, complain of George Heppler, defendant in this suit, who is a citizen and inhabitant of the State of Illinois, in the United States of America, of a plea wherefore he, the said defendant, with force and arms, &c., entered into the following described premises: For that heretofore, to wit, on the first day of December, in the year of our Lord one thousand eight hundred and fifty-four, the said plaintiffs were possessed of certain premises in the county of Peoria, in the said State of Illinois, and described as follows, to wit: that part of the lot No. fifty-one, in the village of Peoria, confirmed to Hyppolite Maillet, by an act of Congress approved the third of March, A.D. 1823, entitled An act to confirm certain claims to lots in the village of Peoria, in the State of Illinois, as is covered by the southwesterly half-lot No. ten, in block No. forty-one, in Ballance's addition to the town of Peoria, so called, and laid out on the southwest quarter of section No. nine, in township eight north, in range 8 east, of fourth principal meridian; and being so possessed thereof, the said defendant afterwards, to wit, on the second day of December, in the year of our Lord one thousand eight hundred and fifty-four, entered into such premises, and that he unlawfully withhold from the plaintiffs the possession thereof; and said plaintiffs aver that they claim title to said premises in fee; and said plaintiffs further aver that the aforedescribed premises, being the matter in dispute, exceed, exclusive of costs, the sum or value of five hundred dollars. Whereof said plaintiffs say that they are injured and have sustained damages to a large amount, to wit, five hundred dollars, and therefore they sue, &c.

MANNING & MERRIMAN,
Attorneys for Plaintiffs.

To the above-named defendant. Take notice, that:

1. On the first day of the next term of the Circuit Court of the United States within and for the District and State of Illinois, to be held at the city of Springfield, in said State of Illinois, on the 3d Monday of December, A.D. one thousand eight hundred and fifty-four, or as soon thereafter as counsel can be heard, a declaration, of which the above is a copy, will be filed in said court.

2. That upon filing the same a rule will be entered requiring you, such defendant, to appear and plead to such declaration within twenty days after the entry of such rule.

3. That if you neglect so to appear and plead, a judgment by default will be entered against you, and the plaintiff will recover possession of the premises described in said declaration.

Dated Dec. 4th, 1852.

Yours, &c.,
MANNING & MERRIMAN,
Attorneys for Plaintiff.

State of Illinois, County of Peoria.

Alfred R. Kidwell, being first duly sworn, deposes and says, that he served a declaration and notice, of which the within and foregoing are copies, upon the within-named defendant, by delivering the same to him personally on the 12th day of December, A.D. 1854.

ALFRED R. KIDWELL.

Subscribed and sworn to before me this 16th day of December, A.D. 1854.

A. L. MERRIMAN,
U. S. Commissioner.

Indorsed: Filed Dec. 20th, 1854. Wm. Pope, clerk.

United States of America, State and District of Illinois. Circuit Court, December Term, A.D. 1854.

Know all men by these presents, that I, A. L. Merriman, of the county of Peoria, and State and District of Illinois, am held and firmly bound unto George Heppler, or to the officers of the Circuit Court of the United States for the District of Illinois, in the sum of five hundred dollars, to be paid to said Heppler or to the said officers aforesaid, their certain attorneys, heirs, executors, administrators, or assigns, or successors in office. To which payment well and truly to be made I do bind myself, my heirs, executors, and administrators, and every of them, jointly, severally, and firmly by these presents.

Witness my hand and seal the 20th day of December, in the year of our Lord one thousand eight hundred and fifty-four.

The condition of the above obligation is such, that whereas Joseph L. Papin and Nicholas B. S. Eldred have this day, to wit, at the date of the above written, instituted a suit in the said Circuit Court of the United States for the District of Illinois against George Heppler. Now if the said Merriman, heirs, executors, or administrators, shall well and truly discharge all costs that may accrue and be adjudged against him the said plaintiff in the prosecution of said suit, or shall well and truly discharge all costs that may accrue in their behalf if judgment shall pass against the said defendant and the costs, and fail to be collected of defendant, or all costs which

may have accrued in failure of the prosecution of said suit to effect, then this obligation shall be void; otherwise of full force and effect.

A. L. MERRIMAN. [L. S.]

Indorsed: Filed this 20th day of Dec. A.D. 1854. Wm. Pope, clerk.

And on the same day, to wit, the 20th day of December, in the December term, A.D. 1854, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

JOSEPH L. PAPIN et al.
v.
GEORGE HEPPLER. } Ejectment.

This day came the plaintiffs by their attorneys, and filed their declaration in ejectment herein, together with the notice in writing thereto attached, and upon reading and filing an affidavit of a due service of a true copy of said declaration and notice upon said defendant, it is ordered, on motion of said plaintiffs by their said attorneys, that defendant plead thereto in twenty days, or that his default be entered.

And afterwards, to wit, on the 12th day of January, A.D. 1855, as yet of the December term, A.D. 1854, of said Circuit Court, came into court the said George Heppler, defendant, by C. Ballance, his attorney, and filed his plea in the above entitled cause in the words and figures following, to wit:

United States of America, District of Illinois. In the Circuit Court, of the Dec. Term, A.D. 1854.

GEORGE HEPPLER
ads.
JOSEPH L. PAPIN. } In Ejectment.

Said defendant comes and defends the force and injury when, &c., and says said plaintiff actio non, because he says he is not guilty of the trespass and ejectment in said declaration charged against him, and of this he puts himself upon the country, &c.

C. BALLANCE,
For Defendant.

Indorsed: Filed Jan'y 12th, 1855. Wm. Pope, clerk.

JOSEPH L. PAPIN, NICHOLAS B. S. ELDRED,
v.
CATHERIN ROETHER. } Ejectment.

Be it remembered, that heretofore, to wit, on the 20th day of De-

cember, in the December term, A.D. 1854, of the Circuit Court of the United States for the District of Illinois, came into court, the said Joseph L. Papin and Nicholas B. S. Eldred, plaintiffs, by Messrs. Manning and Merriman, their attorneys, and filed their declaration, notice, and certificate of service, and also their bond for costs in the above entitled cause, in the words and figures following, to wit:

United States of America, District and State of Illinois, *ss.*

In the Circuit Court of the United States in and for the District and State of Illinois, of the December term, in the year of our Lord one thousand eight hundred and fifty-four.

Joseph L. Papin, who is a citizen of the State of Missouri, and Nicholas B. S. Eldred, who is a citizen of the State of New York, both of the United States of America, plaintiffs in this suit, complain of Catherine Roether, defendant in this suit, who is a citizen and inhabitant of the State of Illinois, in the United States of America, of a plea wherefore she, the said defendant, with force and arms, &c., entered into the following described premises: for that heretofore, to wit, on the first day of December, in the year of our Lord one thousand eight hundred and fifty-four, the said plaintiff, possessed of certain premises, situated in the county of Peoria, in the said State of Illinois, and described as follows, to wit: that part of lot or claim fifty-one, in the village of Peoria, confirmed to Hyppolite Maillet, by the confirmatory act of Congress, approved the third of March, 1823, entitled An act to confirm certain claims to lots in the village of Peoria, in the State of Illinois, as is covered by the northeasterly half of lot eleven, in block forty-two, in Ballance's addition to the town of Peoria, so called, and laid out on the southwest fractional quarter of section nine, in township eight north, in range eight east, of the fourth principal meridian, and being so possessed thereof, the said defendant afterwards, to wit, on the second day of December, in the year of our Lord one thousand eight hundred and fifty-four, entered into such premises, and that she unlawfully withhold from the plaintiff the possession thereof; and said plaintiffs aver that they claim title to said premises in fee. And said plaintiff further aver, that the afore-described premises, being the matter in dispute, exceed, exclusive of costs, the sum or value of five hundred dollars. Whereof said plaintiff say that they are injured, and have sustained damages to a large amount, to wit, five hundred dollars, and therefore they sue, &c.

MANNING & MERRIMAN,
Attorneys for Plaintiffs.

To the above-named defendant. Take notice, that,

1. On the first day of the next term of the Circuit Court of the

United States within and for the District and State of Illinois, to be held at the city of Springfield, in said State of Illinois, on the 3d Monday of December, A.D. one thousand eight hundred and fifty-four, or as soon thereafter as counsel can be heard, a declaration, of which the above is a copy, will be filed in said court.

2. That upon filing the same, a rule will be entered requiring you, such defendant, to appear and plead to such declaration within twenty days after the entry of such rule.

3. That if you neglect so to appear and plead, a judgment by default will be entered against you, and the plaintiff will recover possession of the premises described in said declaration.

Yours, &c.,

MANNING & MERRIMAN,
Attorney for Plaintiff.

Dated Dec. 4th, 1854.

State of Illinois, County of Peoria.

Alfred R. Kidwell, being first duly sworn, deposes and says, that he served a declaration and notice, of which the within and foregoing are copies, upon the within-named defendant, by delivering the same to him personally, on the 12th day of December, A.D. 1854.

ALFRED R. KIDWELL.

Subscribed and sworn to, before me, this 16th day of December, A.D. 1854.

A. L. MERRIMAN,
U. S. Commissioner.

Indorsed: Filed Dec. 20th, 1854. Wm. Pope, clerk.

United States of America, State and District of Illinois.

Circuit Court, December Term, A.D. 1854.

Know all men by these presents, that I, A. L. Merriman, of the county of Peoria, and State and District of Illinois, am held and firmly bound unto Catherine Roether, or to the officers of the Circuit Court of the United States for the District of Illinois, in the sum of five hundred dollars, to be paid to said Roether, or to the said officers aforesaid, their certain attorneys, heirs, executors, administrators, or assigns, or successors in office. To which payment well and truly to be made I do bind myself, my heirs, executors, and administrators, and every of them, jointly, severally, and firmly by these presents. Witness my hand and seal, the 20th day of December, in the year of our Lord one thousand eight hundred and fifty-four. The condition of the above obligation is such, that whereas Joseph L. Papin and Nicholas B. S. Eldred have this day, to wit, at

the date of the above-written, instituted a suit in the said Circuit Court of the United States for the District of Illinois, against Catherine Roether; now, if the said Merriman, heirs, executors, or administrators shall well and truly discharge all costs that may accrue, and be adjuged against him, the said plaintiff, in the prosecution of said suit, or shall well and truly discharge all costs that may accrue in their behalf, if judgment shall pass against said defendant, and *and* the costs, and fail to be collected of defendant, or all costs which may have accrued in failure of the prosecution of said suit to effect, then this obligation shall be void, otherwise of full force and effect.

A. L. MERRIMAN. [L. S.]

Indorsed: Filed this 20th day of Dec., A. D. 1854. Wm. Pope, clerk.

And on the same day, to wit, on the 20th day of December, in the December term, A. D. 1854, of said Circuit Court, in the record of the proceedings thereof in said entitled cause, is the following entry, to wit:

JOSEPH L. PAPIN et al.
v.
CATHERINE ROETHER. } Ejectment.

This day came the plaintiffs, by their attorneys, and filed their declaration in ejectment herein, together with the notice in writing thereto attached; and upon reading and filing an affidavit of a due service of a true copy of said declaration and notice upon said defendant, it is ordered, on motion of said plaintiffs, by their said attorneys, that defendant plead thereto in twenty days, or that her default be entered.

And on the 12th day of January, A. D. 1855, in the December term, A. D. 1854, of said Circuit Court, came into court the said Catherine Roether, defendant, by C. Ballance, her attorney, and filed her plea in said cause, which is in the words and figures following, to wit:

United States of America, District of Illinois.

In the Circuit Court of the December Term, A. D. 1854.

CATHERINE ROESTER
ads.
JOSEPH L. PAPIN et al. } In Ejectment.

Said defendant comes and defends the force and injury, when, &c., and says she is not guilty of the trespass and ejectment in said

declaration charged against her. And of this she puts herself upon the country.

C. BALLANCE,
For Deft.

Indorsed: Filed January 12th, 1855. Wm. Pope, clerk.

JOSEPH L. PAPIN, NICHOLAS B. S. ELDRED,
v.
CATHERINE BENSEL. } Ejectment.

Be it remembered, that on the 20th day of December, in the December term, A. D. 1854, of the Circuit Court of the United States for the District of Illinois, came into court the said Joseph L. Papin and Nicholas B. S. Eldred, plaintiffs, by Messrs. Manning & Merriman, their attorneys, who filed in open court their declaration, notice, and affidavit of service, and also their bond for costs in the above entitled cause; which are in the words and figures following, to wit:

United States of America, District and State of Illinois.

In the Circuit Court of the United States in and for the District and State of Illinois, of the December term, in the year of our Lord one thousand eight hundred and fifty-four.

Joseph L. Papin, who is a citizen of the State of Missouri, and Nicholas B. S. Eldred, who is a citizen of the State of New York, both of the United States of America, plaintiffs in this suit, complain of Catherine Bensel, defendant in this suit, who is a citizen and inhabitant of the State of Illinois, in the United States of America, of a plea, wherefore she, the said defendant, with force, and arms, &c., entered into the following described premises: For that heretofore, to wit, on the first day of December, in the year of our Lord one thousand eight hundred and fifty-four, the said plaintiffs were possessed of certain premises, situated in the county of Peoria, in the said State of Illinois, and described as follows, to wit: that portion of lot or claim fifty-one confirmed to Hyppolite Maillet, by the confirmatory act of Congress of the third of March, A.D. 1823, entitled "An act to confirm certain claims to lots in the village of Peoria, in the State of Illinois, as is covered by lot No. nine in block forty-two, in Ballance's addition to the town of Peoria, so called; surveyed and laid out on the southwest quarter of section nine, in township eight north, in range eight east, of the fourth principal meridian."

And being so possessed thereof, the said defendant afterwards, to wit, on the second day of December, in the year of our Lord one thousand eight hundred and fifty-four, entered into such premises,

and that she unlawfully withholds from the plaintiffs the possession thereof; and said plaintiffs aver that they claim title to said premises in fee. And said plaintiffs further aver that the afore-described premises, being the matter in dispute, exceed, exclusive of costs, the sum or value of five hundred dollars.

Whereof said plaintiffs say that they are injured, and have sustained damages to a large amount, to wit, five hundred dollars; and therefore they sue, &c.

MANNING & MERRIMAN,
Attorney for Plaintiff.

To the above-named defendant. Take notice, that:

1. On the first day of the next term of the Circuit Court of the United States, within and for the District and State of Illinois, to be held at the city of Springfield, in said State of Illinois, on the 3d Monday of December, A. D. one thousand eight hundred and fifty-four, or as soon thereafter as counsel can be heard, a declaration, of which the above is a copy, will be filed in said court.

2. That upon filing the same, a rule will be entered requiring you, such defendant, to appear and plead to such declaration within twenty days after the entry of such rule.

3. That if you neglect so to appear and plead, a judgment by default will be entered against you, and the plaintiff will recover possession of the premises described in said declaration.

Yours, &c.,

MANNING & MERRIMAN,
Attorney for Plaintiffs.

Dated Dec. 4th, 1854.

State of Illinois, County of Peoria.

Alfred R. Kidwell, being first duly sworn, deposes and says, that he served a declaration and notice, of which the within and foregoing are copies, upon the within-named defendant, by delivering the same to him personally, on the 12th day of December, A. D. 1854.

ALFRED R. KIDWELL.

Subscribed and sworn to before me this 16th day of December, A. D. 1854.

A. L. MERRIMAN,
U. S. Commissioner.

Indorsed: Filed Dec. 20th, 1854. Wm. Pope, clerk.

United States of America, State and District of Illinois.
Circuit Court, December Term, A. D. 1854.

Know all men by these presents that I, A. L. Merriman, of the county of Peoria, and State and District of Illinois, am held and

firmly bound unto Catharine Bensel, or to the officers of the Circuit Court of the United States for the District of Illinois, in the sum of five hundred dollars, to be paid to said Bensel, or to the said officers aforesaid, their certain attorneys, heirs, executors, administrators, or assigns, or successors in office; to which, payment well and truly to be made, I do bind myself, my heirs, executors, and administrators, and every of them, jointly, severally, and firmly by these presents.

Witness my hand and seal the 20th day of December, in the year of our Lord one thousand eight hundred and fifty-four.

The condition of the above obligation is such, that whereas Joseph L. Papin and Nicholas B. S. Eldred have this day, to wit, at the date of the above written, instituted a suit in the said Circuit Court of the United States for the District of Illinois, against Catharine Bensel; now, if the said Merriman, heirs, executors, or administrators, shall well and truly discharge all costs that may accrue and be adjudged against him, the said plaintiff, in the prosecution of said suit, or shall well and truly discharge all costs that may accrue in their behalf, if judgment shall pass against the said defendant, and the costs, and fail to be collected of defendant, or all costs which may have accrued in failure of the prosecution of said suit to effect, then this obligation shall be void, otherwise of full force and effect.

A. L. MERRIMAN. [L. S.]

Indorsed: Filed this 20th day of December, A. D. 1854. Wm. Pope, clerk.

And on the same day, to wit, on the 20th day of December, A. D. 1854, in the record of the proceedings of said court in said cause is the following entry, to wit:

JOSEPH L. PAPIN et al.
v.
CATHARINE BENSEL. } Ejectment.

This day came the plaintiffs, by their attorneys, and filed their declaration in ejectment herein, together with the notice in writing thereto attached, and upon reading and filing an affidavit of a due service of a true copy of said declaration and notice upon said defendant, it is ordered, on motion of said plaintiffs, by their said attorneys, that defendant plead thereto in twenty days, or that her default be entered.

And afterwards, to wit, on the 12th day of January, A. D. 1855, of the December term, A. D. 1854, of said court, came into court the said Catharine Bensel, by C. Ballance her attorney, and filed her plea in the above-entitled cause in the words and figures following, to wit:

United States of America, District of Illinois. In the Circuit Court of the December Term, 1854.

CATHARINE BENSEL
ads.
JOSEPH L. PAPIN. } In Ejectment.

Defendant comes and defends the force and injury when, &c., and prays judgment of said declaration and notice, because he says that said premises in said declaration put in controversy are not in value worth five hundred dollars, and of this he puts himself upon the country. Wherefore he prays judgment.

C. BALLANCE,
For Defendant.

Indorsed: Filed January 12th, 1855. Wm. Pope, clerk.

JOSEPH L. PAPIN, NICHOLAS B. S. ELDRED,
v.
PHILIP J. MOSHER. } Ejectment.

Be it remembered, that heretofore, to wit, on the 20th day of December, in the December term, A.D. 1854, of the Circuit Court of the United States, for the District of Illinois, came into court, the said Joseph L. Papin and Nicholas B. S. Eldred, plaintiffs, by Messrs. Manning & Merriman, their attorneys, who filed in open court their declaration, notice and affidavit of service, and also their bond for costs in the above-entitled cause, which are in the words and figures following, to wit:

United States of America, District and State of Illinois.

In the Circuit Court of the United States, in and for the District and State of Illinois, of the December term, in the year of our Lord one thousand eight hundred and fifty-four.

Joseph L. Papin, who is a citizen of the State of Missouri, and Nicholas B. S. Eldred, who is a citizen of the State of New York, both of the United States of America, plaintiffs in this suit, complain of Philip J. Mosher, defendant in this suit, who is a citizen and inhabitant of the State of Illinois, in the United States of America, of a plea, wherefore he, the said defendant, with force and arms, &c., entered into the following described premises: for that heretofore, to wit, on the first day of December, in the year of our Lord one thousand eight hundred and fifty-four, the said plaintiffs were possessed of certain premises, situated in the county of Peoria, in the said State of Illinois, and described as follows, to wit: that part of lot or claim No. fifty-one, in the village of Peoria, confirmed to Hypolite Maillet, by the confirmatory act of Congress of third of March,

A.D. 1823, entitled an Act to confirm certain claims to lots in the village of Peoria, in the State of Illinois, as is covered by lot No. two, in block forty-two, in Ballance's addition to the town of Peoria, so called, surveyed and laid out on the southwest fractional quarter of section nine, in township eight north, in range eight east, of the fourth principal meridian, and being so possessed thereof, the said defendant afterwards, to wit, on the second day of December, in the year of our Lord one thousand eight hundred and fifty-four, entered into such premises, and that he unlawfully withhold from the plaintiffs the possession thereof, and said plaintiffs aver that they claim title to the said premises in fee.

And said plaintiffs further aver, that the aforedescribed premises, being the matter in dispute, exceed, exclusive of costs, the sum or value of five hundred dollars. Whereof, said plaintiffs say that they are injured and have sustained damages to a large amount, to wit, five hundred dollars, and therefore they sue, &c.

MANNING & MERRIMAN,
Attorneys for Plaintiff.

To the above-named defendant. Take notice, that,

1. On the first day of the next term of the Circuit Court of the United States, within and for the District and State of Illinois, to be held at the city of Springfield, in said State of Illinois, on the 3d Monday of December, A.D. one thousand eight hundred and fifty-four, or as soon thereafter as counsel can be heard, a declaration of which the above is a copy, will be filed in said court.

2. That, upon filing the same a rule will be entered, requiring you, such defendant, to appear and plead to such declaration within twenty days after the entry of such rule.

3. That if you neglect so to appear and plead, a judgment by default will be entered against you, and the plaintiff will recover possession of the premises described in said declaration.

Yours, &c.,
MANNING & MERRIMAN,
Attorney for Plaintiffs.

Dated Dec. 4th, 1854.

State of Illinois, County of Peoria.

Alfred R. Kidwell being first duly sworn, deposes and says that he served a declaration and notice of which the within and foregoing are copies, upon the within named defendant, by delivering the same to him personally on the eleventh day of December, A.D. 1854.

ALFRED R. KIDWEL.

Subscribed and sworn to before me, Jacob Gale, clerk of the Circuit Court of Peoria county, this eleventh day of December, A.D.

1854. Witness, Jacob Gale, clerk of said court, and the seal thereof, the day and year last aforesaid.

[SEAL.] JACOB GALE,
Clerk.

Indorsed: Filed Dec. 20th, 1854. Wm. Pope, clerk.

United States of America, State and District of Illinois.

Circuit Court, December Term, A.D. 1854.

Know all men by these presents, that I, A. L. Merriman, of the county of Peoria and State and District of Illinois, am held and firmly bound unto Philip J. Mosher, or to the officers of the Circuit Court of the United States for the District of Illinois, in the sum of five hundred dollars, to be paid to said Mosher, or to the said officers aforesaid, their certain attorneys, heirs, executors, administrators, or assigns, or successors in office. To which payment, well and truly to be made, I do bind myself, my heirs, executors and administrators, and every of them, jointly, severally, and firmly, by these presents. Witness my hand and seal, the 20th day of December, in the year of our Lord one thousand eight hundred and fifty-four.

The condition of the above obligation is such, that whereas, Joseph L. Papin and Nicholas B. S. Eldred, have this day, to wit, at the date of the above written, instituted a suit in the said Circuit Court of the United States for the District of Illinois, against Philip J. Mosher. Now, if the said plaintiffs, heirs, executors, or administrators, or shall well and truly discharge all costs that may accrue and be adjudged against him, the said plaintiff, in the prosecution of said suit, or shall well and truly discharge all costs that may accrue in their behalf if judgment shall pass against the said defendant and the costs, and fail to be collected of defendant, or all costs which may have accrued in failure of the prosecution of said suit to effect, then this obligation shall be void, otherwise of full force and effect.

A. L. MERRIMAN. [L. S.]

Indorsed: Filed this 20th day of December, A.D. 1854. Wm. Pope, clerk.

And on the same day, to wit, the 20th day of December, A.D. 1854, in the record of the proceedings of said court in the above entitled cause, is the following entry, to wit:

JOSEPH L. PAPIN et al.
v.
PHILIP J. MOSHER. } Ejectment.

This day came the plaintiffs by their attorneys, and filed their declaration in ejectment herein, together with the notice in writing thereto attached; and upon reading and filing an affidavit of a due

service of a true copy of said declaration, and notice upon said defendant, it is ordered, on motion of said plaintiffs by said attorneys, that defendant plead thereto in twenty days, or that his default be entered.

And afterwards, to wit: on the 12th day of January, A.D. 1855, of the December term, A.D. 1854, of the said Circuit Court, came into court the said Philip J. Mosher, defendant, by C. Ballance, his attorney, who filed his plea in said cause, in the words and figures following, to wit:

United States of America, District of Illinois. In the Circuit Court of the December Term, 1854.

PHILIP MOSHER *ads.* JOSEPH L. PAPIN et al. } In Ejectment.

Said defendant comes and defends the force and injury, when, &c., and says, he is not guilty of the trespass and ejectment in said declaration charged against him, and of this he puts himself upon the country, &c.

C. BALLANCE,
For Defendant.

Indorsed: Filed January 12th, 1855. Wm. Pope, clerk.

JOSEPH L. PAPIN, NICHOLAS B. S. ELDRED, *v.* JOHN COOK. } Ejectment.

Be it remembered, that heretofore, to wit, on the 20th day of December, in the December term, A.D. 1854, of the Circuit Court of the United States for the District of Illinois, came into court the said Joseph L. Papin and Nicholas B. S. Eldred, by Messrs. Manning & Merriman, their attorneys, and filed in open court their declaration, notice, and affidavit of service, and also their bond for costs, in the above-entitled cause, which are in the words and figures following, to wit:

United States of America, District and State of Illinois, *ss.*

In the Circuit Court of the United States in and for the District and State of Illinois, of the December term, in the year of our Lord one thousand eight hundred and fifty-four, Joseph L. Papin, who is a citizen of the State of Missouri, and Nicholas B. S. Eldred, who is a citizen of the State of New York, both of the United States of America, complain of plaintiffs in this suit, complain of John Cook, defendant in this suit, who is a citizen and inhabitant of the State

of Illinois, in the United States of America, of a plea, wherefore he, the said defendant, with force and arms, &c., entered into the following described premises. For that heretofore, to wit, on the first day of December, in the year of our Lord one thousand eight hundred and fifty-four, the said plaintiff possessed of certain premises, situated in the county of Peoria, in said State of Illinois, and described as follows, to wit: that part of lot or claim fifty-one, in the village of Peoria, confirmed to Hyppolite Maillet by the confirmatory act of Congress, approved the third of March, A.D. 1823, entitled An act to confirm certain claims to lots in the village of Peoria, in the State of Illinois, as is covered by the southwesterly half of lot eleven, in block forty-two, in Ballance's addition to the town of Peoria, so called, laid out on the southwest fractional quarter of section nine, in township eight north, in range eight east, of the fourth principal meridian. And being so possessed thereof, the said defendant afterwards, to wit, on the second day of December, in the year of our Lord one thousand eight hundred and fifty-four, entered into such premises, and that he unlawfully withhold from the plaintiff the possession thereof; and said plaintiffs aver that they claim title to said premises in fee; and said plaintiffs further aver, that the aforesaid premises, being the matter in dispute, exceed, exclusive of costs, the sum or value of five hundred dollars. Whereof said plaintiff say that they are injured, and have sustained damages to a large amount, to wit, five hundred dollars, and therefore he sue, &c.

MANNING & MERRIMAN,
Attorney for Plaintiffs.

To the above-named defendant: Take notice, that,

1. On the first day of the next term of the Circuit Court of the United States within and for the District and State of Illinois, to be held at the city of Springfield, in said State of Illinois, on the 3d Monday of December, A.D. one thousand eight hundred and fifty-four, or as soon thereafter as counsel can be heard, a declaration of which the above is a copy will be filed in said court.

2. That upon filing the same, a rule will be entered requiring you, such defendant, to appear and plead to such declaration within twenty days after the entry of such rule.

3. That if you neglect so to appear and plead, a judgment by default will be entered against you, and the plaintiff will recover possession of the premises described in such declaration.

Yours, &c.,
MANNING & MERRIMAN,
Attorney for Plaintiffs.

State of Illinois, County of Peoria.

Alfred R. Kidwell, being first duly sworn, deposes and says that he served a declaration and notice, of which the within and forego-

ing are copies, upon the within-named defendant, by delivering the same to Mrs. Cook, the wife of the within John Cook, a white person, over twelve years of age, and at the residence of the said John Cook, on the 12th day of December, A.D. 1854.

ALFRED R. KIDWELL.

Subscribed and sworn to before me, this 16th day of December, A.D. 1854.

A. L. MERRIMAN,
Commissioner.

Indorsed: Filed Dec. 20th, 1854 Wm. Pope, clerk.

United States of America, State and District of Illinois.

Circuit Court. December Term, A.D. 1854.

Know all men by these presents, that I, A. L. Merriman, of the county of Peoria and State and District of Illinois, am held and firmly bound unto John Cook, or to the officers of the Circuit Court of the United States for the District of Illinois, in the sum of five hundred dollars, to be paid to said Cook, or to said officers aforesaid, their certain attorneys, heirs, executors, administrators or assigns, or successors in office. To which payment, well and truly to be made, I do bind myself, heirs, executors, and administrators, and every of them, jointly, severally, and firmly, by these presents. Witness my hand and seal, the 20th day of December, in the year of our Lord one thousand eight hundred and fifty-four. The condition of the above obligation is such, that whereas Joseph L. Papin and Nicholas B. S. Eldred have this day, to wit, at the date of the above-written, instituted a suit in the said Circuit Court of the United States for the District of Illinois against John Cook; now, if the said Papin & Eldred, heirs, executors, or administrators, shall well and truly discharge all costs that may accrue and be adjudged against him, the said plaintiff, in the prosecution of said suit, or shall well and truly discharge all costs that may accrue in their behalf, if judgment shall pass against the said defendant, and the costs, and fail to be collected of Cook, or all costs which may have accrued in failure of the prosecution of said suit to effect, then this obligation shall be void; otherwise, of full force and effect.

A. L. MERRIMAN. [L. S.]

Indorsed: Filed this 20th day of Dec., A.D. 1854. Wm. Pope, clerk.

And on the same day, to wit, the 20th day of December, A.D. 1854, in the records of the proceedings of said court in said cause is the following entry, to wit:

JOSEPH L. PAPIN et al.
v.
JOHN COOK. } Ejectment.

This day came the plaintiffs, by their attorneys, and filed their declaration in ejectment herein, together with the notice in writing thereto attached. And upon reading and filing an affidavit of a due service of a true copy of said declaration and notice upon said defendant, it is ordered, on motion of said plaintiffs, by their said attorneys, that defendant plead thereto in twenty days, or that his default be entered.

And afterwards, to wit, on the 12th day of January, A.D. 1855, of the December term, A.D. 1854, of said court, came into court the said John Cook, by C. Ballance, his attorney, and filed his plea in the above-entitled cause, in the words and figures following, to wit:

United States, District of Illinois.

In the Circuit Court, December Term, 1854.

JOHN COOK
ads.
JOSEPH L. PAPIN et al. } In Ejectment.

Said defendant comes and defends the wrong and injury when, &c., and says he is not guilty of the trespass and ejectment in said declaration charged against him. And of this he puts himself upon the country, &c.

C. BALLANCE,
For Defendant.

Indorsed: Filed Jan'y 12th, 1855. Wm. Pope, clerk.

JOSEPH L. PAPIN, NICHOLAS B. S. ELDRED,
v.
MICHAEL WEIDMAN. } Ejectment.

Be it remembered, that heretofore, to wit, on the 21st day of December, A.D. 1854, in the December term of the Circuit Court of of the United States for the District of Illinois, came into court, the said Joseph L. Papin and Nicholas B. S. Eldred, plaintiffs, by Messrs. Manning & Merriman, their attorneys, who filed, in open court, their declaration, notice, and affidavit of service, and also their bond for costs in the above-entitled cause, which are in the words and figures following, to wit:

United States of America, District and State of Illinois.

In the Circuit Court of the United States in and for the District and State of Illinois, of the December term, in the year of our Lord

one thousand eight hundred and fifty-four, Joseph L. Papin, who is a citizen of the State of Missouri, and Nicholas B. S. Eldred, who is a citizen of the State of New York, both of the United States of America, plaintiffs in this suit, complain of Michael Weidman, defendant in this suit, who is a citizen and inhabitant of the State of Illinois, in the United States of America, of a plea, wherefore he, the said defendant, with force and arms, &c., entered into the following described premises: For that heretofore, to wit, on the first day of December, in the year of our Lord one thousand eight hundred and fifty-four, the said plaintiffs were possessed of certain premises, situated in the county of Peoria, in the said State of Illinois, and described as follows, to wit: that part of lot or claim fifty-one, in the village of Peoria, confirmed to Hyppolite Maillet by the confirmatory act of Congress, approved 3d of March, 1823, entitled An act to confirm certain claims to lots in the village of Peoria, in the State of Illinois, as is covered by the southeasterly half of lot twelve, in block forty-two, in Ballance's addition to the town of Peoria, so called, laid out on the southwest fractional quarter of section nine, in township eight north, in range eight east, of the fourth principal meridian; and being so possessed thereof, the said defendant, afterwards, to wit, on the second day of December, in the year of our Lord one thousand eight hundred and fifty-four, entered into such premises, and that he unlawfully withholds from the plaintiffs the possession thereof. And said plaintiffs aver that they claim title to said premises in fee. And said plaintiffs further aver, that the aforesaid premises, being the matter in dispute, exceed, exclusive of costs, the sum or value of five hundred dollars; whereof said plaintiffs say that they are injured, and have sustained damages to a large amount, to wit, five hundred dollars; and therefore they sue, &c.

MANNING & MERRIMAN,
Attorney for Plaintiffs.

To the above-named defendant. Take notice, that,

1. On the first day of the next term of the Circuit Court of the United States within and for the District and State of Illinois, to be held at the city of Springfield, in said State of Illinois, on the 3d Monday of December, A.D. one thousand eight hundred and fifty-four, or as soon thereafter as counsel can be heard, a declaration, of which the above is a copy, will be filed in said court.

2. That upon filing the same, a rule will be entered, requiring you, such defendant, to appear and plead to such declaration, within twenty days after the entry of such rule.

3. That if you neglect so to appear and plead, a judgment by de-

fault will be entered against you, and the plaintiff will recover possession of the premises described in said declaration.

Yours, &c.,

MANNING & MERRIMAN,
Attorney for Plaintiffs.

Dated Dec. 4th, 1854.

State of Illinois, County of Peoria.

Alfred R. Kidwell, being first duly sworn, deposes and says, that he served a declaration and notice, of which the within and foregoing are copies, upon the within-named defendant, by delivering the same to him personally, on the 12th day of December, A.D. 1854.

ALFRED R. KIDWELL.

Subscribed and sworn to before me, this 16th day of December, A.D. 1854.

A. L. MERRIMAN,
U. S. Commissioner.

Indorsed: Filed Dec. 21st, 1854. Wm. Pope, clerk.

United States of America, State and District of Illinois.

Circuit Court, December Term, A.D. 1854.

Know all men by these presents, that I, A. L. Merriman, of the county of Peoria, and State and District of Illinois, am held and firmly bound unto Michael Weidman, or to the officers of the Circuit Court of the United States for the District of Illinois, in the sum of five hundred dollars, to be paid to said Weidman, or to said officers aforesaid, their certain attorneys, heirs, executors, administrators, or assigns, or successors in office; to which payment, well and truly to be made, I do bind myself, my heirs, executors, and administrators, and every of them, jointly, severally, and firmly, by these presents. Witness my hand and seal, the 21st day of December, in the year of our Lord one thousand eight hundred and fifty-four. The condition of the above obligation is such, that whereas, Joseph L. Papin and Nicholas B. S. Eldred have this day, to wit, at the date of the above-written, instituted a suit in the said Circuit Court of the United States for the District of Illinois, against Michael Weidman. Now, if the said Merriman, heirs, executors, or administrators, shall well and truly discharge all costs that may accrue and be adjudged against him, the said plaintiff, in the prosecution of said suit, or shall well and truly discharge all costs that may accrue in their behalf, if judgment shall pass against said defendant, and the costs, and fail to be collected of defendant, or all costs which

may have accrued in failure of the prosecution of said suit to effect, then this obligation shall be void; otherwise, of full force and effect.

A. L. MERRIMAN. [L. S.]

Indorsed: Filed this 21st day of Dec., A.D. 1854. Wm. Pope, clerk.

And on the same day, to wit, the 21st day of December, A. D. 1854, in the record of the proceedings of said Circuit Court, in said cause, is the following entry, to wit:

JOSEPH L. PAPIN et al.
v.
MICHAEL WEIDMAN. } Ejectment.

This day came the plaintiffs, by their attorneys, and filed their declaration in ejectment herein, together with the notice in writing thereto attached, and upon reading and filing an affidavit of a due service of a true copy of said declaration and notice upon said defendant, it is ordered, on motion of said plaintiffs, by their said attorneys, that defendant plead thereto in twenty days, or that his default be entered.

And afterwards, to wit, on the 12th day of January, A.D. 1855, in the December term, A.D. 1854, of said court, came into court, the said Michael Weidman, defendant, by C. Ballance, his attorney, and filed his plea in said cause, in the words and figures following, to wit:

United States of America, District of Illinois.

In the Circuit Court, of the December Term, A.D. 1854.

MICHAEL WEIDMAN
ads.
JOSEPH. L. PAPIN et al. } In Ejectment.

Said defendant comes and defends the force and injury, when, &c., and says he is not guilty of the trespass and ejectment in said declaration charged against him, and of this he puts himself upon the country, &c.

C. BALLANCE,
Att'y for Deft.

Indorsed: Filed Jan. 12th, 1855. Wm. Pope, clerk.

JOSEPH L. PAPIN,
NICHOLAS B. S. ELDRED,
v.
MELCHIER BIDDLE.
} Ejectment.

Be it remembered, that, heretofore, to wit, on the 21st day of December, in the December term, A.D. 1854, of the Circuit Court of the United States for the District of Illinois, came into court, the said Joseph L. Papin and Nicholas B. S. Eldred, plaintiffs, by Messrs. Manning & Merriman, their attorneys, who filed in open court their declaration, notice, and affidavit of service, and also their bond for costs in the above-entitled cause, which are in the words and figures following, to wit:

United States of America, District of Illinois, *ss.*

In the Circuit Court of the United States in and for the District and State of Illinois, of the December Term, in the year of our Lord one thousand eight hundred and fifty-four.

Joseph L. Papin, who is a citizen of the State of Missouri, and Nicholas B. S. Eldred, who is a citizen of the State of New York, both of the United States of America, plaintiffs in this suit, complain of Melchier Biddle, defendant in this suit, who is a citizen and inhabitant of the State of Illinois, in the United States of America, of a plea wherefore, he the said defendant, with force and arms, &c., entered into the following-described premises. For that, heretofore, to wit, on the first day of December, in the year of our Lord one thousand eight hundred and fifty-four, the said plaintiffs were possessed of certain premises, situated in the county of Peoria, in the said State of Illinois, and described as follows, to wit: that portion of lot or claim fifty-one, in the village of Peoria, confirmed to Hyppolite Maillet by the confirmatory act of Congress, approved the third of March, A.D. 1823, entitled, An act to confirm certain claims to lots in the village of Peoria, in the State of Illinois, as is covered by the southwest half of lot No. ten, in block No. forty-two, in Ballance's addition to the town of Peoria, so called, surveyed and laid out on the southwest fractional quarter of section nine, in township eight north, in range eight east, of the fourth principal meridian; and being so possessed thereof, the said defendant afterwards, to wit, on the second day of December, in the year of our Lord one thousand eight hundred and fifty-four, entered into such premises, and that he unlawfully withhold from the plaintiffs the possession thereof; and said plaintiffs aver that they claim title to said premises in fee. And said plaintiffs further aver, that the aforedescribed premises, being the matter in dispute, exceed, exclusive of costs, the sum or value of five hundred dollars, whereof said plaintiffs say that they are injured, and have sustained damages to a

large amount, to wit, five hundred dollars, and therefore they sue, &c.

MANNING & MERRIMAN,
Attorneys for Plaintiffs.

To the above-named defendants: Take notice, that,

1. On the first day of the next term of the Circuit Court of the United States within and for the District and State of Illinois, to be held at the city of Springfield, in said State of Illinois, on the 3d Monday of December, A.D. one thousand eight hundred and fifty-four, or as soon thereafter as counsel can be heard, a declaration, of which the above is a copy, will be filed in said court.

2. That, upon filing the same, a rule will be entered, requiring you, such defendant, to appear and plead to such declaration, within twenty days after the entry of such rule.

3. That, if you neglect so to appear and plead, a judgment by default will be entered against you, and the plaintiff will recover possession of the premises described in said declaration.

Dated Dec. 4th, 1854.

Yours, &c.,
MANNING & MERRIMAN,
Attorneys for Plaintiffs.

State of Illinois, County of Peoria.

Alfred R. Kidwell, being first duly sworn, deposes and says, that he served a declaration and notice, of which the within and foregoing are copies, upon the within-named defendant, by delivering the same to him personally, on the 12th day of December, A.D. 1854.

ALFRED R. KIDWELL.

Subscribed and sworn to before me, this 16th day of December, A.D. 1854.

A. L. MERRIMAN,
U. S. Com'r.

Indorsed: Filed Dec. 21, 1854. Wm. Pope, clerk.

United States of America, State and District of Illinois.

Circuit Court, December Term, A.D. 1854.

Know all men by these presents, that I, A. L. Merriman, of the county of Peoria, and State and District of Illinois, am held and firmly bound unto Melchior Biddle, or to the officers of the Circuit Court of the United States for the District of Illinois, in the sum of five hundred dollars, to be paid to said Bidde or to the said officers aforesaid, their certain attorneys, heirs, executors, administrators, or assigns, or successors in office. To which payment, well and

truly to be made, I do bind myself, my heirs, executors, and administrators, and every of them, jointly, severally, and firmly by these presents. Witness my hand and seal, the 21st day of December, in the year of our Lord one thousand eight hundred and fifty-four. The condition of the above obligation is such, that whereas Joseph L. Papin and Nicholas B. S. Eldred have this day, to wit, at the date of the above written, instituted a suit in the said Circuit Court of the United States for the District of Illinois, against Melchier Biddle; now if the said Merriman, heirs, executors, or administrators, shall well and truly discharge all costs that may accrue and be adjudged against him, the said plaintiff, in the prosecution of said suit, or shall well and truly discharge all costs that may accrue in their behalf, if judgment shall pass against the said defendant, and the costs, and fail to be collected of defendant, or all costs which may have accrued in failure of the prosecution of said suit to effect, then this obligation shall be void, otherwise of full force and effect.

A. L. MERRIMAN. [L. S.]

Indorsed: Filed this 21st day of December, A.D. 1854. Wm. Pope, clerk.

And on the same day, to wit, the 21st day of December, A. D. 1854, in the record of the proceedings of said court in said cause, is the following entry, to wit:

JOSEPH L. PAPIN, NICHOLAS B. S. ELDRED,
v.
MELCHIER BIDDLE. } Ejectment.

This day came the plaintiffs, by their attorneys, and filed their declaration in ejectment herein, together with the notice in writing thereto attached, and upon reading and filing an affidavit of a due service of a true copy of said declaration and notice upon said defendant, it is ordered, on motion of said plaintiffs, by their said attorneys, that defendant plead thereto in twenty days, or that his default be entered.

And afterwards, to wit, on the 12th day of January, A.D. 1855, in the December term, A.D. 1854, of said court, came into court the said Melchier Biddle, defendant, by C. Ballance, his attorney, and filed his plea in said cause, in the words and figures following, to wit:

United States of America, District of Illinois.

Of the December Term, A.D. 1854, of the Circuit Court.

MELCHIER BIDDLE
ads.
JOSEPH L. PAPIN. } In Ejectment.

Said defendant comes and defends, &c., and says he is not guilty

of the trespass and ejectment in and by said declaration alleged against him, and of this he puts himself upon the country, &c.

C. BALLANCE,
For Defendant.

Indorsed: Filed January 12th, 1855. Wm. Pope, clerk.

And afterwards, to wit, on the 20th day of July, in the July term, A.D. 1855, of the Circuit Court of the United States for the Northern District of Illinois, in the record of the proceedings of said court in the following named cases, is the following entry, to wit:

252. JOSEPH L. PAPIN, NICHOLAS B. S. ELDRED, *v.* JAMES RAMSAY. } Ejectment.

253. JOSEPH L. PAPIN, NICHOLAS B. S. ELDRED, *v.* NICHOLAS ERION. } Ejectment.

254. JOSEPH L. PAPIN, NICHOLAS B. S. ELDRED, *v.* GEORGE HEPPLER. } Ejectment.

255. JOSEPH L. PAPIN, NICHOLAS B. S. ELDRED, *v.* CATHERINE ROESTER. } Ejectment.

256. JOSEPH L. PAPIN, NICHOLAS B. S. ELDRED, *v.* CATHERINE BENSEL. } Ejectment.

259. JOSEPH L. PAPIN, NICHOLAS B. S. ELDRED, *v* PHILIP J. MOSHER. } Ejectment.

261. JOSEPH L. PAPIN, NICHOLAS B. S. ELDRED, *v.* JOHN COOK. } Ejectment.

267. JOSEPH L. PAPIN, NICHOLAS B. S. ELDRED, *v.* MICHAEL WEIDMAN. } Ejectment.

268. JOSEPH L. PAPIN, NICHOLAS B. S. ELDRED, *v.* MELCIER BIDDLE. } Ejectment.

By agreement of the parties, by their attorneys, and in conformity with their stipulation on file, it is ordered by the court, that the above-entitled causes, numbered 252, 253, 254, 255, 256, 259, 261, 267, and 268, be consolidated, and that Charles Ballance be substituted upon the record herein as party defendant in the place and

stead of the present defendants, and that the cause be continued until next term.

And afterwards, to wit, on the 21st day of July, in the July term, A.D. 1856, of said court, in the record of the proceedings thereof in the case of Joseph L. Papin, and Nicholas B. S. Eldred against Charles Ballance, as the same was substituted, in accordance with the last above-recited entry, is the following entry, to wit:

JOSEPH L. PAPIN, NICHOLAS B. S. ELDRED,
v.
CHARLES BALLANCE. } Ejectment.

Now at this day come the parties, by their respective attorneys, and upon issue joined, thereupon came a jury of good and lawful men, to wit, Francis Barnett, William Henry, H. M. Boggess, Peter Stout, John Brown, Rufus Ordway, Daniel P. Holt, William McKee, William W. Crandoll, M. Tagart, Elisha Putnam, and D. Johnson, who were duly elected, tried, and sworn, and after hearing the evidence and arguments of counsel, and receiving instructions from the court, the jury retired to consider of their verdict, and after a short absence they returned into court with the following verdict, to wit: We, the jury, find the defendant guilty of unlawfully withholding from the possession of the plaintiff the land and premises described in their declaration, to wit: those premises situated in the county of Peoria, in the State of Illinois, described as follows, to wit: that part of claim or lot fifty-one, in the village of Peoria, confirmed to Hyppolite Maillet by the confirmatory act of Congress, approved March 3d, 1823, entitled "An Act to confirm certain claims to lots in the village of Peoria, in the State of Illinois, as is covered by the following described lots, as laid out by Charles Ballance in his addition to the town of Peoria, called Ballance's addition, and laid out on the southwest quarter of section nine, in township eight north, in range eight east, of the fourth principal meridian, to wit: the northwesterly half of lot one, in block forty-two; lots two, nine, ten, eleven, and the southeasterly half of lot twelve, in block forty-two; and the southwest half of lot ten, in block forty-one. We also find the estate, established in the plaintiffs on the trial, to be an estate in fee simple, and we assess the plaintiffs' damages at the sum of one cent.

It is thereupon considered and adjudged by the court, that the plaintiffs have and recover of and from the said defendant possession of the land and premises above described, according to the force, form, and effect of their said recovery, and that they have a writ of possession therefor, and that they also have and recover of and from the defendant the said sum of one cent, their damages as aforesaid assessed, together with their costs by them about their suit in this behalf expended, amounting to the sum of dollars and cents, and that they have execution therefor.

And afterwards, to wit, on the 6th day of August, in the July term, A.D. 1856, of said court, came the said defendant, and filed in open court his bill of exceptions in said cause, in the words and figures following, to wit:

United States Circuit Court, Northern District of Illinois. July Term, A.D. 1856.

JOSEPH L. PAPIN, NICHOLAS B. S. ELDRED, *v.* CHARLES BALLANCE. } In Ejectment.

Be it remembered, that on the trial of the above-entitled cause, the plaintiff, to maintain the issue on his part, read in evidence the act of Congress of May 15th, 1820, entitled "An Act for the relief of the inhabitants of the village of Peoria, in the State of Illinois."

2d. The act of Congress of 3d March, 1823, entitled "An Act to confirm certain claims to lots in the village of Peoria, in the State of Illinois."

3d. He offered to read in evidence a part of the report of Edward Coles, register of the land office at Edwardsville, as the same is found in print in the third volume of American State Papers, prepared by Walter Lowry, and printed by Duff Green, under the authority of the Senate; to the reading of which defendant objected, because there is no law making that book, or any part of it, evidence; but the court overruled said objection, and a part of said printed report was given in evidence, referring to this claim.

4th. He then offered in evidence a connected plat of all the French claims surveyed at Peoria by Joseph C. Brown, deputy-surveyor, which was approved by the surveyor-general at St. Louis on the 1st of September, 1840, to which was appended the following certificate.

Plat of the new village of Peoria, and such of the out lots and field lots in the neighborhood thereof as are connected with said new village, in one continuous survey, and description of the out-boundaries of the said town, and continued connection of out lots and field lots situate on sections 9 and 16, township 8 north of the base line, range 8 east, of the 4th principal meridian.

(For plat, see original, page 59.)

Description.

Begin at the upper end of the southeastern edge of First street, on the southwest bank of Lake Peoria; thence N. 46½° W. one hundred feet, to the eastern corner of unclaimed lot A., 420 feet 10 inches, the north corner of said unclaimed lot A., at the northeast

end of the S. E. edge of Second street, 486 feet 10 inches, to the N. E. end of the N. W. edge of Second street; thence S. 43½° W. with the N. W. edge of Second street, 256 feet 8 inches, to the intersection with the N. E. edge of street A.; thence N. 46½° W. with the N. E. edge of street A., 320 feet 10 inches, to the N. W. end of the N. E. edge of said street A.; thence S. 43½° W. 66 feet, to the north corner of lot No. 66, at the N. W. end of the S. W. edge of said street A., 108 feet 9⅓ inches, the west corner of lot No. 66 and north corner of unclaimed lot C., 322 feet 8 inches, the west corner of unclaimed lot C. and the north corner of lot No. 12, 408 feet 2⅔ inches, the west corner of lot No. 12 and the N. W. end of the N. E. edge of street B., 474 feet 2⅔ inches, the N. W. end of the S. W. edge of street B. and the north corner of lot No. 8, 709 feet 6 inches, the north corner of lot No. 15, 795 feet and ⅔ of an inch, to the west corner of lot No. 8, which is also the west corner of lot No. 15, and east corner of lot No. 61, and north corner of lot No. 28; thence N. 46½° W. with the N. E. boundary of lot No. 61, 15 chains and 40 links, to the north corner of lot No. 61; thence with the N. W. boundary of lot No. 61, S. 43½° W. 5 chains and 52¼ links, to the west corner of lot No. 61; thence with the S. W. boundary of lot No. 61, S. 46½° E. 4 chains and 94 links, to the north corner of lot No. 51, at the intersection of the N. W. boundary thereof with the S. W. boundary of lot No. 61; thence with the N. W. boundary of lot No. 51, S. 43½° W. 4 chains and 88 links, to the west corner of lot No. 51; thence with the S. W. boundary of lot No. 51, S. 46½° E. 6 chains and 10 links, to the north corner of lot No. 40, at the intersection of the N. W. boundary thereof with the S. W. boundary of lot No. 51; thence with the N. W. boundary of lot No. 40, S. 43½° W. 3 chains and 23⅓ links, to the west corner of lot No. 40; thence with the S. W. boundary of lot No. 40, S. 46½° E. 4 chains 34 links, to the N. W. end of the N. E. edge of street E., on the S. W. boundary of lot No. 40; thence S. 43½° W. 66 feet, to the N. W. end of the S. W. edge of street E., and the north corner of unclaimed lot E., 322 feet 8 inches, to the east corner of lot No. 31, at the intersection of the N. E. boundary thereof with the N. W. boundary of unclaimed lot E.; thence with the N. E. boundary of lot No. 31, N. 46½° W. 13 chains and 16 links, to the north corner of lot No. 31; thence with the N. W. boundary of lot No. 31, S. 43½° W. 3 chains and 88 links, to the west corner of lot No. 31, at the intersection with the N. W. boundary thereof with the N. E. boundary of lot No. 37; thence with the N. E. boundary of lot No. 37, N. 46½° W. 5 chains and 5½ links, to the north corner of lot No. 37; thence with the N. W. boundary of lot No. 37, S. 43½° W. 7 chains and 66 links, to the west corner of lot No. 37; thence with the S. W. boundary of lot No. 37, S. 46½° E. 6 chains and 67½ links, to the north corner of lot No. 67, at the intersection of the N. W. boundary thereof with the S. W. boundary of lot No.

37; thence with the N. W. boundary of lot No. 67, S. 43½° W. 6 chains, to the west corner of lot No. 67; thence with the S. W. boundary of lot No. 67, S. 46½° E. 6 chains and 38 links, to the south corner of lot No. 67, on the N. W. boundary of lot No. 64; thence S. 43½° W. 1 chain and 66 links, the west corner of lot No. 64, and north corner of lot No. 20, 7 chains and 61 links, the west corner of lot No. 20, and north corner of lot No. 48, 11 chains and 86 links, to the west corner of lot No. 48; thence with the S. W. boundary of lot No. 48, S. 46½° E. 6 chains and 88 links, the point of intersection of the S. W. boundary of lot No. 48 with the section line between sections 9 and 16, township 8 north, range 8 east, of the 4th principal meridian, which point is 13 chains and 93 links, N. 89½° W. of the corner of fractional sections 9 and 16, on the lake, 8 chains, to the south corner of lot No. 48; thence with the S. E. boundary of lot No. 48, N. 43½° E. 1 chain and 6 links, the point of intersection of the S. E. boundary of lot No. 48 with the section line between sections 9 and 16, township 8 north, range 8 east, of the 4th principal meridian, which point is 12 chains and 38 links, N. 89½° W. of the corner, to fractional sections 9 and 16, on the lake, 4 chains and 25 links, to the east corner of lot No. 48, on the S. W. boundary of lot No. 20; thence with the S. W. boundary of lot No. 20, S. 46½° E. 2 chains, to the south corner of lot No. 20; thence N. 43½° E. 5 chains and 95 links, the east corner of lot No. 20, and south corner of lot No. 64, 13 chains and 61 links, the east corner of lot No. 64, and *and* south corner of lot No. 43, 21 chains and 27 links, to the east corner of lot No. 43, and south corner of lot No. 34, at the S. W. end of the N. W. edge of Second street; thence S. 46½° E. 66 feet, the S. W. end of the S. E. edge of Second street, and west corner of lot No. 33, 386 feet 10 inches, the south corner of lot No. 33, 491 feet 1⅓ inches, to the lower end of the S. E. edge of First street, on the N. W. bank of Lake Peoria; thence along the N. W. bank of Lake Peoria, the following courses and distances: N. 38° E. 176 links; thence N. 42° E. 432 links; thence N. 17¾° E. 150 links; thence N. 78° E. 72 links; thence N. 47½° E. 417 links; thence N. 37° E. 188 links; thence N. 44¾° E. 2448 links, to the place of beginning.

Then for connection with the public surveys, run from said place of beginning along the N. W. bank of Lake Peoria, the following courses and distances: N. 44¾° E. 1081 links; thence N. 50¾° E. 1300 links, to the point of intersection of the section line between sections 9 and 10 with the N. W. bank of Lake Peoria, which point is 2406 links S. 0° 30′ W. of the corner to sections 3, 4, 9 and 10, township 8 north, range 8 east, of the 4th principal meridian.

Also, from the lower end of the S. E. edge of First street, the following courses and distances along the bank of the lake, were taken for connection: S. 51¾° W. 198 links; thence S. 39° W. 819 links; thence S. 41¼° W. 216 links; thence S. 49½°

W. 287 links; thence S. 85° W. 116 links, to the point of intersection of the section line between sections 9 and 16, township 8 north, range 8 east, of the 4th principal meridian, which point is 2510 links S. 89° 30′ E. of the corner to sections 8, 9, 16, and 17, of said township.

Surveyed on the several days designated in the foregoing separate descriptions of the lots by Joseph C. Brown, deputy surveyor, under instructions from Daniel Dunklin, surveyor of the public lands in the States of Illinois and Missouri, bearing date the 11th of April, 1837.

Examined and approved this first day of September, 1840.

WILLIAM MILBURN,
Surveyor of the Public Lands in the States of Illinois and Missouri.

OFFICE OF THE SURVEYOR-GENERAL FOR ILLINOIS AND MISSOURI,
SAINT LOUIS, January 31st, 1854.

I certify that the foregoing plat of the new village of Peoria, and of such of the out lots and field lots in the neighborhood thereof as are connected with said new village in one continuous survey and description of the out boundaries of the said town, and continued connection of out lots and field lots, situate on sections 9 and 16, township 8 north of the base line, range 8 east of the 4th principal meridian, are correctly copied from the records of the surveys of Peoria, pages 79 and 80, preserved in this office.

JNO. LOUGHBOROUGH,
Surveyor-General.

To the reading of which defendant objected, because the survey ought to have been certified from the office of the commissioner of the General Land Office. But the court overruled said objection, and said plat was given in evidence to the jury.

5th. He then introduced a special plat of French claim No. 51, to which the defendant made the same objection, but the court ruled as before.

(For plat, see original, page 65.)

Claim No. Fifty-one.

Situate on the southwest fractional quarter of fractional section 9, in fractional township 8 north of the base line, range 8 east of the 4th principal meridian.

Plat and description of the survey of an out lot of 5 acres and 104–1000 of an acre, equal to 6 arpents of land, adjoining the new village of Peoria, in the State of Illinois, confirmed to Hyppolite Maillet, by an act of Congress, approved the 3d of March, 1823, entitled, "An act to confirm certain claims to lots in the village of

Peoria, in the State of Illinois," it being No. 51 of the report made by the register of the land office, at Edwardsville, in pursuance of an act of Congress, approved the 15th of May, 1820, entitled, "An act for the relief of the inhabitants of the village of Peoria, in the State of Illinois."

Description.

Commence at a post on the N. E. boundary of lot No. 40, which is the south corner of this lot, and west corner of unclaimed lot D.; thence N. 46½° W. 4 chains and 36 links, to a post, in the north corner of lot No. 40, 10 chains and 46 links to a post, the west corner of this lot, from which the north corner of Francis Voris's white framed dwelling-house bears S. 34° W. 6 chains and 79½ links distant; thence N. 43½ E. 4 chains and 88 links, to a post in the S. W. boundary of lot No. 61, which post is the north corner of this lot, and it is 1 chain and fifty links S. 46½° E. of a post at the intersection of the S. W. boundary of lot No. 61, with the subdivision line between the N. W. and S. W. quarters of section 9, township 8 north, range 8 east of the 4th principal meridian, which post is 9 chains and 60 links N. 89° 30′ W. of a stone, set by a former surveyor as a corner common, to the N. E., N. W., S. W. and S. E. quarters of said section 9; thence S. 46½° E. 10 chains and 46 links, to a post, the east corner of this lot, south corner of lot No. 61, west corner of lot No. 46, and north corner of lot No. 49; thence S. 43½° W. 64 feet 2 inches, to a post, the west corner of lot 49, and north corner of lot No. 50, 128 feet 4 inches, to a post, at the N. W. end of the N. E. edge of the cross street D., which post is the west corner of lot No. 50, 194 feet 4 inches, to a post, at the N. W. end of the S. W. edge of the cross street D., which post is the north corner of lot No. 55, 279 feet 10⅔ inches to a post, the west corner of lot No. 55, and north corner of unclaimed lot D., 322 feet 8 inches, or 4 chains and 88 links, to the place of beginning.

Surveyed on the 5th of May, 1837, by Jos. C. Brown, deputy surveyor, under instructions from Daniel Dunklin, surveyor of the public lands in the States of Illinois and Missouri, bearing date the 11th of April, 1837.

Examined and approved this first day of September, 1840.

(Signed) WILLIAM MILBURN,
Surveyor of the Public Lands in the States of Illinois and Missouri.

Surveyor's Office, Saint Louis, 22d July, 1847.

The foregoing plat and description of the survey of lot No. 51, in the village of Peoria, the caption and certificate thereto, are correctly copied from the record thereof, in book of "Record of Sur-

veys (in) Peoria, Illinois, in this office. Six words are crossed over before signing.

F. R. CONWAY,
Surveyor of the Public Lands in the States of Illinois and Missouri.

6th. He then read deeds and depositions, showing that whatever title Hyppolite Maillet may have been entitled to by reason of these laws and proceedings, and the said report and survey, had become vested in said plaintiffs before the commencement of this suit.

Defendant then, to maintain the issue on his part, read in evidence, 1st, a certificate of pre-emption, which is as follows:

LAND OFFICE, QUINCY, ILL., 12th April, 1836.

I, Samuel Alexander, register of said office, do hereby certify, that on the 28th day of July, 1832, Charles Ballance claimed and established a right of pre-emption to the southwest quarter of section No. nine, township eight north of the base line, and range eight east, of the 4th principal meridian, as appears by documents on file in my office.

Given from under my hand and seal the day and year aforesaid.

SAMUEL ALEXANDER,
Register.

2d. He read a receipt of the receiver of public money, at Quincy, Ill., which is as follows:

Pre. Act. 1834. No. 13,293.

RECEIVER'S OFFICE,
QUINCY, ILLINOIS, 27th November, 1837.

Received from Charles Ballance, of Peoria county, Illinois, the sum of one hundred and eighty-four dollars and twenty-eight and $\frac{3}{4}$ cents, being in full payment for the southwest fractional quarter of section No. nine, in township No. eight north of the base line, of range No. eight east, of the 4th principal meridian, containing one hundred and forty-seven acres and 43–100 of an acre, at the rate of one dollar and twenty-five cents per acre.

$184 28$\frac{3}{4}$.

THO. CARLIN,
Receiver.

(Duplicated.)

3d. He read in evidence of the certificate of entry, which is as follows:

U. S. LAND OFFICE,
QUINCY, ILLINOIS, 27th November, 1837.

I do hereby certify, that Charles Ballance, of Peoria county, in the State of Illinois, did this day enter or purchase, at this office, the southwest fractional quarter of fractional section No. 9, in town-

ship No. 8 north, of range No. 8 east, of the 4th pr. meridian, containing one hundred and forty-seven and 43–100 acres, certificate No. 13,293, as appears of record in this office.

SAMUEL LEECH,
Register.

State of Illinois, County of Peoria.

RECORDER'S OFFICE.

I, Charles Kettelle, recorder of said county, do certify the within certificate is, this 28th day of May, A.D. 1840, duly recorded in said office, in book L., page 186.

CHARLES KETTELLE,
R. P. Co.

4th. He read a deposition of Smith Frye, which is as follows:

PAPIN and ELDRED
v.
CHARLES BALLANCE. } In Ejectment.

In the Circuit Court of the United States of America, Northern District of Illinois.

The deposition of Smith Fry, taken on behalf of the defendant in the above-entitled cause, by agreement of parties, at my office, in the city of Chicago, in the said district, on the seventeenth day of July, in the year of our Lord one thousand eight hundred fifty-six, and to be used in the trial of said cause, and Charles Ballance, the defendant, and A. L. Merriman, attorney for the plaintiff, were present at the caption thereof before me.

J. T. MOULTON,
U. S. Commissioner.

I removed from the State of Pennsylvania to the town of Peoria, in the State of Illinois, in the year 1834. I have lived in Peoria and its immediate vicinity, ever since. I am well acquainted with the lands in and about Peoria. As a means of obtaining that information, I have a portion of the time held the office of sheriff. A portion of the time held the office of county commissioner, and a portion of the time held the office of supervisor of the county of Peoria. When I went to live at Peoria, Charles Ballance was in the actual possession of a portion of the southwest quarter of section nine (9), township eight (8) north, of range eight (8) east, of the fourth (4th) principal meridian, by having it inclosed by a substantial fence, claiming the whole of said quarter in his own right and against the claims of all others; and he has ever since so continued to hold and claim it, except as he has sold portions of it to others, and yielded them the possession accordingly. Said Ballance did not then reside

on said quarter, but on an adjoining fraction; but he has been actually residing on the same for more than twelve years last past. About 19 or 20 years ago, one Bigelow took possession of, and inclosed a portion of said tract outside of said Ballance's inclosure, and said Ballance brought an action of ejectment against him, which was decided in favor of said Ballance by the Circuit Court of Peoria County, and a writ of posession issued upon said judgment to me as sheriff of said county, and I, as said sheriff, executed said writ, by putting said Ballance into possession of that portion. I have known instances of persons claiming under what are commonly called French claims, setting up claims to portions of said tract, and said Ballance resisting those claims. I never heard of said Ballance claiming under or subservient to those claims. He always professed to hold adversely to them. The portion of said tract that said Bigelow inclosed was northwest of Adams street.

SMITH FRYE.

Cross-examined.

Mr. Ballance had in actual possession probably from one to two acres of said quarter section. It was on the southeasterly part of said quarter section. I can't state precisely when Mr. Ballance first professed to hold adversely to the French claims. I don't think anything of any consequence was said about it till about the time Robert Forsyth commenced some suits upon them. He always said the claims were not worth anything; that he didn't care anything about them. Mr. Vories was in possession of a part, owning forty-two acres in the northwest corner of said quarter section, in 1834, and built on it that year, and was living in the house when I came into the country in 1834, and had from two to three acres inclosed, and he and his family have lived on that tract ever since.

SMITH FRYE.

Written by me, and subscribed and sworn to before me.

J. T. MOULTON,
U. S. Commr.

5th. He read in evidence deposition from James Henderson, which is as follows:

I, James Henderson, do solemnly swear that, on the 16th of May, 1846, there was a brick house on lot 11, in block 40, of Ballance's addition to Peoria, which Charles Ballance claimed to be the owner of; and on that day I moved into said house, under a contract with said Ballance, and I lived in said house, and occupied it with my family, as the tenant of said Ballance, from that day to the first of day of November, 1855. I further testify that the house occupied by Frederick Mainghaff, on lot 7, in said block, has been standing there, and occupied by different tenants of said Ballance, for the

space of eight years. That I, as a house-joiner, wrought on said house eight years ago, but that the lot on which said house stands was inclosed and cultivated before said house was built, by one Coleman, as the tenant of said Ballance. Furthermore, that the portion of said block occupied and possessed by Alonzo Simms at present, and for the last five or six years, had a small dwelling-house on it when he came to Peoria. That in the year 1848, or previously thereto, one James Dougherty bought said house and lot from one Fash, who, I understood, had bought the ground of Charles Ballance; and in said year said Dougherty employed me and others to change, remodel, and enlarge said building, and that said building and lot has been constantly in the possession of said Dougherty or Simms ever since.

Moreover, that when he came to live in Peoria as aforesaid, one Chapman occupied a brick house on lot eight, in said block, under a purchase, as I always understood, from Charles Ballance; that said Chapman held possession of said house and lot until his death.

That upon the death of said Chapman, one Finnell, who claimed to be the brother-in-law of said Chapman, and guardian of his only child, took possession of said premises, and has held possession of them ever since, as the guardian of said child. I further state that when I first came to Peoria to live, as aforesaid, there was a frame dwelling-house standing on lot one, in block forty-two of said block, in which one Daniel Waggoner was residing. That said house has ever since been occupied by persons who claimed to be tenants of said Ballance.

That about ten years ago, but after he came to Peoria to live, there was a small dwelling-house erected on lot eight, in block thirty-nine in said addition, into which, as soon as it was done, or before it was done, one Hoge removed, and occupied it for a considerable time; after which, several others occupied, but all, as I understood, as tenants of Charles Ballance. These are the premises occupied two or three years ago by one Ernst, a shoemaker.

I further testify, that during all the time I have lived in Peoria, Charles Ballance has lived on the southwest quarter of section nine, of township eight north, of range eight east, of the fourth principal meridian, with his family, and has always notoriously claimed the whole of said quarter section in his own right, except as he sold parts of it to others. There is perhaps no fact in the history of Peoria more notorious than that said Ballance held said tract of land adversely to those titles known at Peoria by the designation of French claims.

And further deponent saith not.

JAMES F. HENDERSON.

Subscribed and sworn to before me, this 19th July, 1856.

GEO. T. METCALFE,
U. S. Commissioner.

Indorsed: Filed July, 1856. W. H. Bradley, clerk.

6th. He then proved, by Norman H. Purple, that he had been acquainted with defendant and property in dispute for 19 years. That he was also acquainted with Mr. Voris, spoken of in said Frye deposition; that Voris occupied a portion of the said southwest quarter of section nine, but witness always understood that he held it by deed from said Ballance. Ballance always claimed to hold said tract in his own right, resisting all who claimed adversely to him.

7th. He introduced a plat of so much of Ballance's addition and said lot 51, marked on it, as represented the ground in controversy.

(For plat, see original, page 76.)

The crossing of the lines running to the cardinal points indicate the centre of section nine, T. 8 N., R. 8 E. The black lines represent a part of Ballance's addition to Peoria. The red lines, French claim No. 51.

8th. It was agreed by both parties that all taxes that had been assessed on the following lots, in Ballance's addition to Peoria, had been paid by said Ballance, and those holding under him, for more than seven years before the commencement of this suit, to wit: lot ten, in block 41, and lots one and two, in block 42, in Ballance's addition to Peoria, and that the property in dispute in this action is, and when this suit was brought, was, worth more than two thousand dollars.

Plaintiff then introduced the application of Charles Ballance for the entry of said quarter section, as follows:

No. 13,293.

27th day of November, 1837.

I, Charles Ballance, of Peoria County, and State of Illinois, do hereby apply for the purchase of the southwest fractional quarter of section numbered nine, in township numbered eight north, of range numbered eight east, of the fourth principal meridian, containing one hundred and forty-seven $\frac{43}{100}$ acres, according to the returns of the surveyor-general, for which I have agreed with the register to give at the rate of one dollar and twenty-five cents per acre, subject, however, to the rights of any and all persons claiming under act of Congress 3d March, 1823, entitled "An Act to confirm certain claims to lots in the village of Peoria, in the State of Illinois."

C. BALLANCE.

I, Samuel Leach, register of the land office at Quincy, Illinois, do hereby certify that the fractional quarter section above described

contains $147\frac{43}{100}$ acres, as mentioned, and that the price agreed upon is $1 25 per acre.

Pre. act., 1834. SAMUEL LEECH,
Register.

LAND OFFICE, QUINCY, Nov. 9th, 1854.

I, A. C. Marsh, register of the land office at Quincy, Illinois, do hereby certify that the foregoing is a true and correct copy of the original application of Charles Ballance, now on file in this office.

A. C. MARSH,
Register.

Plaintiff then introduced the patent to Charles Ballance, issued under the foregoing application, as follows:

Certificate No. 13,293.

The United States of America, to all to whom these presents shall come, greeting: Whereas Charles Ballance, of Peoria county, Illinois, has deposited in the General Land Office of the United States a certificate of the register of the land office at Quincy, whereby it appears that full payment has been made by the said Charles Ballance, according to the provisions of the act of Congress of the 24th of April, 1820, entitled "An Act making further provision for the sale of the public lands," for the southwest fractional quarter of section nine, in township eight north, of range eight east, in the district of lands subject to sale at Quincy, Illinois, containing one hundred and forty-seven acres and forty-three hundredths of an acre, according to the official plat of the survey of the said lands returned to the General Land Office by the surveyor-general, which said tract has been purchased by the said Charles Ballance.

Now know ye, that the United States of America, in consideration of the premises, and in conformity with the several acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant, unto the said Charles Ballance, and to his heirs, the said tract above described; to have and to hold the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging, unto the said Charles Ballance, and to his heirs and assigns, forever, subject, however, to the rights of any and all persons claiming under the act of Congress of 3d March, 1823, entitled "An Act to confirm certain claims to lots in the village of Peoria, in the State of Illinois."

[SEAL.] In testimony whereof, I, Martin Van Buren, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed. Given under my hand at the city of Washington, the twenty-fourth day of Janu-

ary, in the year of our Lord one thousand eight hundred and thirty eight, and of the independence of the United States the sixty-second.

By the President, MARTIN VAN BUREN,
By A. VAN BUREN,
Secretary.
H. M. GARLAND,
Recorder of the General Land Office.

The above was all the evidence in the case. Defendant then asked the court to instruct the jury that:

A. Instructions asked by Defendant.

July Term, 1856.

JOSEPH L. PAPIN, NICHOLAS B. S. ELDRED, *v.* CHARLES BALLANCE. } In Ejectment.

1st. Defendant asks the court to instruct the jury that the title introduced by defendant, is superior at law to that offered by plaintiff.

2d. That if the jury believe, from the evidence, that defendant has been in the actual possession of a part of the southwest quarter of section nine, in township eight north, of range eight east, of the fourth principal meridian, claiming the whole under his pre-emption certificate of 1832, then plaintiff cannot recover.

3d. That the certificate of entry, dated November 27th, 1837, is evidence of title in defendant, derived from the United States, and that if the jury believe from the evidence, that defendant, or those holding under him, had been in possession of the premises in dispute more than seven years before this suit was brought, plaintiff cannot recover.

4th. That if the jury believe, from the evidence, that the defendant and those holding under him have been in the actual possession of any lot on Ballance plat, which interferes with said French claim No. 51, for seven years before this suit was brought, and had, during said time, paid all taxes due on said lot for said time, plaintiff cannot recover in this action.

Which instructions the court refused to give, but instructed the jury as follows:

B. Instructions of the Court to the Jury.

PAPIN et ELDRED
v.
BALLANCE.

The court declined giving the instructions to the jury in the form requested by the defendant's counsel, but instructed the jury as follows:

1st. That the acts of 1820 and 1823, taken in connection with the report of the register of the land office at Edwardsville, and the survey of the surveyor-general, vested the legal title, for the purposes of this action, in the original claimant, if living, or if dead, in his legal representatives. That, under our law, an action of ejectment could be maintained by a party having the right and title under the act of Congress, although the patent had not issued. That until the lot was surveyed, and the survey approved by the surveyor-general, as required by the act of 1823, the claimant could not know the extent and boundaries of the lot, and before that time there could be no adverse possession under the statute of limitations.

2d. The defendant was not bound to enter the land or accept the patent, but he applied for the land and took his title subject to those French claims, and the only title shown is one which is subject to the rights of the French claimants under the act of 1823, and under the circumstances detailed in evidence, and which are not disputed, the court is of opinion that Ballance's title never included, and the government never intended it should include the lot in controversy, if there was any one capable of taking the lot under the act of 1823. And it appears by the application he had full notice of these claims. Under the circumstances, a possession of a part of the quarter could not be considered, in point of law, a possession of the whole, and the defendant was bound by his title, and could only claim the land under his title.

3d. If the jury find the defendant entered and was possessed of the lot in controversy, claiming subject to the title of the French claimants under the act of 1823, he cannot be said to have entered and be possessed, adversely, so as to be protected by the statutes of limitations.

4th. If the defendant had been possessed of the lot in controversy under a title adverse or in hostility to the title of those claiming under the act of 1823, for seven successive years, and had paid the taxes for that time, he might be protected under the statutes.

To all of which decisions, opinions, and rulings of the court, the defendant then and there excepted, and prayed that this, his bill of exceptions, be sealed, signed, and made of record, which is done.

Exceptions allowed.

THOMAS DRUMMOND. [SEAL.]

Indorsed: Filed August 6th, 1856. Wm. H. Bradley, clerk.

And on the 29th day of July, in the July term, A.D. 1856, of said court, the said defendant filed in open court, with the clerk thereof, an appeal bond, in the words and figures following, to wit:

Circuit Court of the United States for the Northern District of Illinois. July Term, A.D. 1856.

Know all men by these presents, that we, Charles Ballance and Isaac Underhill, are held and firmly bound unto Joseph L. Papin and N. B. S. Eldred, in the sum of two thousand dollars, to be paid to the said Papin & Eldred, their executors or administrators. To which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated this 25th day of July, A.D. 1856.

Whereas the above-named Charles Ballance hath prosecuted a writ of error to the Supreme Court of the United States, to reverse the judgment rendered in a certain suit, wherein said Papin & Eldred were plaintiffs and said Ballance was defendant, by the above-named court; now, therefore, the condition of this obligation is such that, if the above-named Charles Ballance shall prosecute his said writ of error to effect, and answer all damages and costs, if he shall fail to make good his plea, then this obligation shall be void; but otherwise it shall remain in full force and virtue.

C. BALLANCE. [SEAL.]
ISAAC UNDERHILL, [SEAL.]
By his attorney in fact,
C. BALLANCE. [SEAL.]

Sealed and delivered
in presence of
WM. H. BRADLEY.

Security approved.

THOMAS DRUMMOND.

Indorsed: Filed July 29th, 1856. Wm. H. Bradley, clerk.

And on the same day, to wit, the 29th day of July, A.D. 1856, said defendant filed with the clerk of said court his writ of error, in the words and figures following, to wit:

United States of America, Northern District of Illinois, *ss.*

The United States of America to the judges of the Circuit Court of the United States for the Northern District of Illinois, greeting.

Because in the record and proceedings, as also in the rendition of

a judgment, in a plea which is in the said court before you, between Joseph L. Papin and Nicholas B. S. Eldred against Charles Ballance, a manifest error hath happened, to the great damage of the said Charles Ballance, as by his complaint appears, and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday in December next, in the said Supreme Court, to be then and there held; that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right, and according to the law and custom of the United States, should be done.

Witness the Hon. Roger B. Taney, chief justice of the Supreme Court of the United States, this 28th day of July, A.D. 1856, and of our independence the 81st year.

[SEAL.]

WM. H. BRADLEY,
Clerk.

Indorsed: Filed July 29th, 1856. Wm. H. Bradley, clerk.

Northern District of Illinois, *ss.*

I, William H. Bradley, clerk of the Circuit Court of the United States for the Northern District of Illinois, do hereby certify the foregoing transcript to be a full, true, and perfect copy from the record of all the proceedings which have been had in said court in said cause of Joseph L. Papin and Nicholas B. S. Eldred against Charles Ballance, as the same now appears in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at my office in Chicago, in said Northern District, this twenty-fifth day of October, A.D. 1856.

[SEAL.]

WM. H. BRADLEY,
Clerk.

Said Ballance comes, when, &c., and says that in the said record and the rendition of said judgment there is manifest error in this, to wit:

1st. Said court erred in permitting the plaintiff to read to the jury a portion of the printed volume, called 3d volume of American State Papers.

2d. Said court erred in permitting said plaintiff to give in evidence to the jury said two plats, approved Sept. 1st, 1840.

3d. Said court erred in refusing to instruct said jury as asked for by said defendant.

4th. Said court erred in instructing said jury in the manner and to the purport it did instruct them.

5th. Said judgment ought to have been for said defendant, and not for said plaintiffs.

For which, and for other errors, apparent in said record and proceedings, he prays that said judgment may be set aside, disannulled, and wholly held for nought.

C. BALLANCE.

Circuit Court of the United States, Northern District of Illinois, *sct.*

JOSEPH L. PAPIN and NICHOLAS B. S. ELDRED *v.* CHARLES BALLANCE. } Ejectment.

Be it remembered, that on the eighteenth day of July, in the year of our Lord one thousand eight hundred and fifty-nine, a writ of error was sued out of the office of the clerk of the Circuit Court of the United States for the Northern District of Illinois, in the above-entitled cause, which said writ, with the bond in appeal filed therein, reads as follows :

United States of America, Northern District of Illinois, *ss.*

The United States of America, to the judges of the Circuit Court of the United States for the Northern District of Illinois, greeting :

Because, in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said court, before you, between Joseph L. Papin and Nicholas B. S. Eldred, and against Charles Ballance, a manifest error hath happened, to the great damage of the said Charles Ballance, as by his complaint appears, and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid, in this behalf, you are hereby commanded, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause to be done therein, to correct that

error, what of right and according to the law and custom of the United States, should be done.

Witness the Honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this 14th day [L. S.] of July, in the year of our Lord one thousand eight hundred and fifty-nine, and of our Independence the 84th year.

WM. H. BRADLEY,
Clerk.

Indorsed: Filed July 18, 1859. Wm. H. Bradley, clerk.

Bond.

CHARLES BALLANCE
v.
JOSEPH L. PAPIN
and NICHOLAS B. S. ELDRED.

In Error to the Circuit Court of the United States for the Northern District of Illinois. July Term, A.D. 1859.

Know all men by these presents, that we, Charles Ballance and Samuel Voris, are held and firmly bound unto the above-named Joseph L. Papin and Nicholas B. S. Eldred, in the sum of two hundred dollars, to be paid to the said Joseph L. Papin and Nicholas B. S. Eldred, their executors or administrators, to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors and administrators, firmly by these presents, sealed with our seals, and dated this 11th day of July, 1859. Whereas the above-bound Charles Ballance has prosecuted a writ of error to the Supreme Court of the United States, to reverse the judgment rendered by said Circuit Court in the above-entitled cause, against said Ballance. Now, therefore, the condition of this obligation is such, that if the above-named Charles Ballance shall prosecute his said writ of error to effect, and answer all costs if he shall fail to make good his plea, then this obligation shall be void, otherwise the same shall remain and be in full force and virtue.

C. BALLANCE. [SEAL.]
SAM'L VORIS, [SEAL.]
By his Att'y in fact.
C. BALLANCE. [SEAL.]

Signed, sealed, and delivered in the presence of

Indorsed: Approved. Thomas Drummond. Filed July 18, 1859. Wm. H. Bradley, clerk.

And afterwards, to wit, on the twenty-second day of July, in the year of our Lord one thousand eight hundred and fifty-nine, a citation issued in said cause, which, with the return or acknowledgment of service indorsed thereon, was filed in the office of the clerk of the Circuit Court of the United States for the Northern District of Illinois, and reads as follows, to wit:

United States of America, *ss.*

To Joseph L. Papin and Nicholas B. S. Eldred, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the Circuit Court of the United States for the Northern District of Illinois, wherein Charles Ballance is plaintiff, and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Thomas Drummond, one of the justices of said court, this fourteenth day of July, 1859.

THOMAS DRUMMOND.

We acknowledge service of the above citation, this 16th day of July, A.D. 1859.

MANNING & MERRIMAN,
Atty's for Papin and Eldred.

Indorsed: Filed July 22, 1859. Wm. H. Bradley, clerk.

Northern District of Illinois, *ss.*

I, William H. Bradley, clerk of the Circuit Court of the United States for the Northern District of Illinois, do hereby certify the above and foregoing to be a full, true, and complete transcript of the writ of error, sued out in the cause wherein Joseph L. Papin and Nicholas B. S. Eldred were plaintiffs, and Charles Ballance defendant, together with the bond and citation filed therein, as the same appears from the originals now on file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at office in the city of Chi-
[SEAL.] cago, this twenty-ninth day of July, in the year of our Lord one thousand eight hundred and fifty-nine, and of our independence, the eighty-fourth year.

WM. H. BRADLEY,
Clerk.

Indorsed: N. Illinois, C. C. U. S. No. 77. Charles Ballance, plaintiff in error, *v.* Joseph L. Papin and Nicholas B. S. Eldred. Filed 3d Oct., 1859.

DEFENDANTS ARGUMENT.

CHARLES BALLANCE, Plaintiff in Error.

vs.

NICHOLAS B. S. ELDRED, JOSEPH L. PAPIN } Defendants in Error.

There is a preliminary matter to be settled before proceeding with the argument in this case. The only exceptions taken to the numerous points that the plaintiff in error attempts to raise on the record, are at the close of the Bill of Exceptions, and are in the following words: "To all which decisions, opinions and rulings of the court, the defendant then and there excepted and prayed, that this, his Bill of Exceptions, be sealed, signed and made of record, which is done."

This the court have repeatedly held is no valid exception to anything. If the party wishes to except to any ruling of the court, upon any point of evidence, the exception must be taken at the time of the ruling; and if the party wishes to except to the charge of the court, he must specify what part of the charge is excepted to, and if the charge was in several instructions; he must specify in his exceptions, which of the instructions are erroneous, and a general exception to the entire charge is not sufficient.

Stimpson *vs.* West Chester Railroad Company, 4, Howard, 380, 401. Barton *vs.* Forsyth, 20, Howard, 532.

This court has, by rule, adopted the same practice.

Provided, however, the court should consider the exceptions well taken, we proceed with the argument in the case.

This was originally in nine suits in ejectment, brought by said defendants, in error, against sundry persons, who occupied in severalty portions of claim fifty-one, in the village of Peoria, in the State of Illinois, and which claim was confirmed to Hyppolite Maillet, by the

confirmatory Act of Congress, approved March 3, 1823, entitled "an act to confirm certain claims to lots in the village of Peoria, in the State of Illinois." The original defendants occupied the said separate parcels, as lots and parts of lots, in Ballance's addition to the town of Peoria, and laid out in lots, blocks, streets and alleys, on the south-west quarter of section 9, township 8, north range 8 east.

These suits were commenced in 1854, pleas filed, and subsequently, by agreement of all parties, Charles Ballance, the plaintiff in error, was substituted as defendant, in place of the defendants to said suits, he being the landlord; and the cases were consolidated and tried at the July term 1856, before Hon. Thomas Drummond, Judge of the Northern District of Illinois, which trial resulted in a verdict of judgment for the plaintiffs below.

The premises sued for, and for which judgment was obtained at such trial, are described as so much of said claim 51, as is covered by the north-westerly half of lot one, lots two, nine, ten, eleven, and the south-easterly half of lot twelve, in block forty-two, and the south-west half of lot ten, in block forty-one, as laid out by Charles Ballance in his addition to the town of Peoria, called Ballance's addition.

The plaintiffs below, to maintain their title to said premises, introduced the several Acts of Congress of May 15, 1820, entitled "An Act for the relief of the inhabitants of the Village of Peoria, in the State of Illinois," and of March 23, 1823, entitled "An Act to confirm certain claims to lots in the Village of Peoria, in the State of Illinois." Also, the report of Edward Coles, Register of the Land Office at Edwardsville, as the same is found in Vol. 3 of American State Papers, prepared by Walter Lowry and printed by Duff Green, under the authority of the Senate, to the reading of which the defendant below objected; which objection the court overruled but no exception was taken at the time. This point, however, was decided in the case of Bryan *vs.* Forsyth, 19, Howard, 334.

Plaintiffs also introduced in evidence, copies of the surveys, both of the general Village of Peoria, as well as a special survey of said claim 51. Both certified by the Surveyor General of the States of Illinois and Missouri, which was the office in which the said surveys were required by the Act of Congress to be filed, to the reading of which the defendant below objected, because the said surveys were not certified by the proper officer, and that they should be certified

to by the Commissioner of the General Land Office, which objection was overruled, but no exception was taken at the time.

The act of April 29, 1816, establishing said office, makes any plat of survey certified by the surveyor, evidence in all courts, thus settling that question, if the same had been properly raised here. 3d. U. S. Statutes, 325.

The plaintiffs then read deeds and proofs, showing that all title vested in said Hyppolite Maillet, by said Acts of Congress, report and surveys, became vested in the plaintiffs below, before the commencement of said suits.

The defendant below offered in evidence, a certificate of pre-emption, a receipt of the Receiver and a certificate of entry of the S. W. 9, 8, 8, with depositions tending to show that Ballance occupied a portion of said quarter section, claiming the whole as early as 1834, but there is no evidence that any portion of his possession extended on, or covered any portion of said claim 51, until after he had laid out said quarter section into a town with lots, blocks, streets and alleys.

In connection with the proof so offered by defendant, the plaintiffs below, offered in evidence, the application of said Ballance made in writing to the proper land office to enter the said south-west quarter of said section 9, subject to the rights of all persons claiming under the act of March 3d, 1823, which application bears date November 27, 1837, and the patent issued to said Ballance, upon said application, dated January 24, 1838, and containing the same exception in favor of said claimants. Also, there is in evidence a plat showing the connection of the said claim 51, and Ballance's addition to Peoria, by which it will be seen that the said claim 51, only covers a portion of blocks forty-one, forty-two and thirty-nine, suit being brought only for a portion of the lots in blocks forty-one and forty two. This addition, laid out by Ballance, was made and recorded in 1837; and three years before the title of said Hyppolite Maillet, under whom the plaintiffs below claim matured, the title of said Maillet only maturing upon the approval of the survey, on the 1st of September, 1840, before which date the said Maillet was not in a condition to assert and maintain his rights to said tract of land.

It was admitted that Ballance, and those claiming under him, had paid all taxes assessed on lot 10, block 41, and on lots 1 and 2, in block 42, for seven years before the commencement of this suit.

The deposition of Smith Frye, only showed that Ballance occupied a portion of said quarter section, claiming title to the whole of it; (but his possession was entirely outside of the said lot 51, and covered no portion of the same;) also, that Voris purchased a portion of said quarter section of Ballance; also, outside of said claim 51, and occupied the same.

The deposition of Adam Henderson, who is the only witness by whom possession of any portion of said claim 51 is attempted, only shows this: That as early as in 1846, sundry of the lots in block 40, in Ballance's addition on said quarter section, were occupied by different tenants, but as no portion of said block 40, is located upon said claim 51, so much of said Henderson's deposition as relates to said block 40, is wholly immaterial; and the same as relates to the possession of lot 8, in block 39, in said addition. The only portion of his deposition that could be, in any way, material in this suit, is that portion wherein he states, that there was in 1846, a dwelling house on lot one, in block 42, in which one Waggoner was residing, and which dwelling house had been occupied by persons claiming to hold under Ballance ever since. Upon what portion of said lot one, was said dwelling house? The plaintiffs below sued for the recovery of the north-westerly half of lot one, the defendant in possession, being James Ramsay. There is no evidence in the record, that locates the said dwelling house upon that portion of said lot one, included in this suit; nor is there a particle of evidence that either of the other lots, or parcels of land in this suit, were ever in the occupancy or possession of said Ballance, or of his tenants, for any period of time, except as they were in possession at the time of the commencement of said suit.

The first point is upon such of the instructions as relate to the question of paramount title.

The acts of Congress of May 15, 1820 and of March 3, 1823, in connection with the Report of the Register and the surveys made and approved, are sufficient to constitute titles. Bryan *vs.* Forsyth, 10, Howard, 334.

But it is contended that this claim 51 is not included in the act of 3d March, 1823, because the act confirms a lot, and not lots, to each settler. In a case where there can be two constructions of an act of Congress, we must inquire into the intention of the grant and construe it accordingly. At the time of the passage of this act, Congress had before it the report of the Register of the Land Office at

Edwardsville, containing a plat of the claims of the different settlers at Peoria, drawn as accurately as could be done, without an actual survey thereof, in which report it was shown that some of the claimants claimed one lot and some more than one lot—and those claiming more than one lot, claimed a small lot upon which they resided, and a larger lot occupied by them for purposes of cultivation—not one of these lots claimed as having been actually resided upon, exceeding in quantity two acres, except No. 22, claimed by Thomas Lusby, claimed to contain about four arpens, or about three acres and a half. The act referred to is as follows:

That there is hereby granted to each of the French and Canadian inhabitants, and other settlers in the Village of Peoria, in the State of Illinois, whose *claims* are contained in a report made by the Register of the Land Office at Edwardsville, in pursuance of the Act of Congress, approved May 15th, 1820, and who have settled a lot in the village aforesaid, prior to 1st of January, 1813, and who have not heretofore received a confirmation of claims or donation of any tract of land or village lot from the United States, the lot so settled upon and improved, when the same shall not exceed two acres, and when the same shall exceed two acres, every such claimant shall be confirmed in a quantity not exceeding ten acres, &c.

Sec. 2. That it shall be the duty of the Surveyor of the Public Lands, for that district to cause a survey to be made of the several lots, and to designate on a plat thereof the lot confirmed, and set apart to each claimant, and forward the same to the Secretary of the Treasury, who shall cause patents to be issued in favor of said claimants, as in other cases. According to the strict grammatical construction of the act, to say nothing of the evident intention of Congress, each claim that should be surveyed and set apart to such settlers by the surveyor, was by said act, confirmed to him; the surveyor being the officer appointed and authorized by said act "to designate on a plat thereof, the lot confirmed and set apart to each claimant."

The language of the act is "to each of the French and Canadian inhabitants and other settlers who have settled a lot in the Village of Peoria, is granted the lot so settled upon and improved." The article *A* prefixed to lot, in the first use of the word, is used to designate the persons who might come within the provisions of the act and entitled to its benefits, being such persons who had settled a lot in said village; and if they had settled a dozen lots in said village, they still

would be entitled to the benefits of the act. The article *the* prefixed to lot, in the second use of the word, defines and limits the confirmation to such lots as were settled upon nd improved, and there is nothing in the act to preclude the possibility of one person claiming more than one lot; provided such lots so claimed, were settled upon and improved by him. The fact that the word lot, in the singular number, is used in the act, does not limit the claims to one singular lot, but the word is used in reference to each lot so claimed, and relates to the thiug and not to the person, and this I believe is usual in legislative enactments. Every lot that was settled upon and improved by the French and Canadian inhabitants and other settlers in Peoria, was subject to the claim of the proper person, although that person may have been the fortunate settler of more than one lot.

I presume it is not contended that the words "settled upon and improved" cannot apply to the lots used for purposes of cultivation, as well as those actually resided upon. If it is so contended, we can only say that the decisions under our pre-emption laws, have uniformly been that actual residence upon a lot, is not necessary to constitute a person a settler and occupant of the lot, if he, by himself or his family, cultivates the same.

Public Land Laws, part 2, page 100.
" " " " 2, " 169.
" " " " 2, " 110.
" " " " 2, " 217.
" " " " 2 " 1035.

In this case, the evidence before the Register, was that Hyppolite Maillet, the confirmee resided upon claim 49, and cultivated claim 51, the lot in controversy as a garden, and the report shows that claims 49, 50 and 51, lay continguous and was really only one lot or settlement, both being within one enclosure, with a fence dividing one from the other, as a matter of convenience to the proprietor. If it were the intention of the act to grant specifically a definite single lot to each settler who had settled *a* lot therein, and whose claims were contained in said report, in pursuance of said Act of Congress of May 15, 1820, why was not the lot or claim pointed out—designated by the act? The law of 1820 was before them, wherein they had authorized a claim to be presented for *a lot or lots.* Such claims had been made and reported, and were before them for action, not only for the small lots upon which their houses had been built, but for the large lots that had been cultivated and improved by the same

individuals. The language of the act of 1823, would also seem to show that Congress had in mind upon the passage of that act, the above facts. That a large number of those living on small lots, also claimed large lots as having been improved, and therefore confirmed in a quantity not exceeding two acres; and where the same shall extend two acres in a quantity not exceeding ten acres. The act was evidently hastily drawn, and the clause last recited is so ambiguous that nothing can be made of it, except to limit the confirmation to ten acres, but it in some manner goes to show the intention of Congress.

Again, if only one lot is confirmed by that act, which lot is it? Each lot comes palpably within the act. Each lot has been alike surveyed and set apart to the claimant by the surveyor, and in case of an adverse possession, each lot is alike subject to the claim of the confirmee? If then only one lot belongs to the confirmee, he has his election; and, in this case, he or his legal representatives, have elected the lot in controversy, under said act of 1823, it was made "*the duty of the surveyor of the public lands of the United States for that district, to cause a survey to be made of the several lots and to designate on a plat thereof the lot confirmed, and set apart to each claimant.*" Hyppolite Maillet was the claimant, and the officer appointed by law to discharge that duty, has surveyed and set apart for him, lot 51, and that survey was approved, thus making his title complete. The power was vested in him for the purpose of designating on a plat, (after survey,) the lot *confirmed and set apart* to each claimant, and that power has been exercised. As between the United States and Hyppolite Maillet, he was the Judge, and his acts are binding on both parties.

Public Schools *vs.* Vifvareoms; op. atty. gent. 1847.

LesBois *vs.* Brannell, 4, How. 449.

Mackay *vs.* Dillon, 4, How. 421.

Menard Heirs *vs.* Many, 8, How. 293-313.

As Ballance applied for and purchased the fractional quarter section on which this claim is located, subject to the rights of all persons claiming under the said act of March 3, 1823, he gets no title by his purchase to the ground covered by this claim. The only other point is on the statutes of limitations of the State of Illinois.

The only statutes under which the plaintiff in error can claim is in the statute of 1835, being section 8 and 9 of chapter 66, of the revised statutes of Illinois, which reads as follows:

Sec. 8. Every real possessory ancestral, or mixed action, or w. of right, brought for the recovery of any lands, tenants or inhabitants, of which any possessed by actual residence thereon, having a connected titled in law or equity, deducible of record from this State or the United States, or from any public officer, or other person authorized by the laws of this State, to sell such land for the non-payment of taxes, or from any sheriff, marshal, or other person authorized to sell such land on execution, or under any order, judgment or decree of any Court of Record, shall be brought within seven years next, after possession being taken as aforesaid, but when the possessor shall acquire such title after taking such possession, the limitation shall begin to run from the time of acquiring title.

Sec. 9. Possession, as described in the preceding section, to bar the rights, actions and suits aforesaid, shall have been continued in manner aforesaid, for the term of seven years, next preceding the time of asserting the right of entry, or the commencement of such suit or action.

In the cases of Ballance and Forsyth, 13, Howard 24, and of Bryan *vs.* Forsyth, 19, Howard 334, it is shown that the plaintiff in error, could not claim adversely, to the defendants in error, until the *lot* of the defendants in error, was ascertained and set apart by the survey and the same approved and recorded. The reason is apparent. Until this was done, no boundaries were ascertained. Ballance took subject to the *claim*, not of any *lot* designated upon the land purchased by him of the United States. But from the time of the recording of the survey, he might have held the lot adversely He did not hold the *quarter section* adversely to them. So far as they were concerned, he had full right to reside upon any other part of the quarter. He had resided on the quarter previously. Before the recording of the survey, although Ballance may have resided on the quarter section and claimed to hold it adversely to the title of the defendants, it did not prejudice their rights. Upon the recording of the survey he could hold the *lot* adversely to the defendants under the act of 1835, above recited. But how could he hold it under that act? Only by *actual residence thereon.* Now that actual residence must be upon the very land in controversy, and that too, for seven years, next preceding the commencement of these suits. It is not sufficient that the plaintiff in error, resided on other land, to which the defendants had no claim. This would be no notice to the defendants, but under this act it must be a notice which can only be given by actual residences. It is not mere possession or occupation, it must be possession taken and held in a specified manner—by actual residence, and this must be of the lot in controversy, or at least some portion of it. This *lot* is a separate grant. Ballance took his title

from the United States, subject to it, as a *separate grant.* This lot is reserved from the effect of his patent. As between him and the owners of this lot, it is distinct from the remainder of the quarter. Therefore to be possessed of it within the act of 1835, it must be by actual residence on this lot, and not upon other lands where the defendants could not question his right to reside. By the evidence in this case it is shown that the portion of the said quarter section covering the *lot* in controversy, had been subdivided into town lots. Now under the act of 1835, Ballance could not claim that he *resided* upon each and every one of these lots, unless it were proven that these lots were connected with his residence by an enclosure. But there is no evidence of any enclosure on these lots in controversy; nor is there any evidence of any actual possession of any kind of these lots. They are lots disjointed and unconnected. They were occupied by different parties, at the time of the commencement of this suit, and there is not the least particle of evidence, that either one of the parties in possession at the time of the commencement of these suits resided on the same, or that any one had resided thereon for the seven years, next preceding the commencement of said suits. It certainly cannot be contended that Ballance resided on those lots, they being in possession of his tenants, at the time of the commencement of this suit, and no evidence that they were in any wise connected with his residence, with perhaps a hundred lots lying between the lots in controversy and Ballance's residence, although he did reside on the same quarter section.

This action was brought for the recovery of a certain lot, set apart and described by the United States, as a particular lot and granted accordingly, and the plaintiff in error did not reside upon it. The plaintiffs case as shown, is not within the most material requirement of the statute. Even admitting that the intention of the court thirdly given is improper in itrelf, yet as the plaintiff in error has not shown himself entitled to the benefit of the statute, the case will not be reversed for that cause. He cannot except to that which cauld not possibly do him any iujury.

The second limitation claimed in this case is known as the act of 1839, and being section 8, in the statute of conveyances, chapter 15 15 of Illinois Revised Statutes, and which reads as follows:

Every person in the actual possession of lands or tenements *under claim and color of title made in good faith* and who shall for seven successive years, continue in such possession, and shall also during said

time, pay all taxes legally assessed on such lands or tenements, shall be held and adjudged to be the legal owner of said lands or tenements to the extent and according to the purport of his or her paper title.

Now by what process of reasoning Ballance could be said to be in possession, (if possession had been proven for the period of time required,) *in good faith*, when he made his written application to purchase, and did purchase subject to the rights of the owner of lot 51 is beyond our comprehension. The Supreme Court of Illinois have docided that the questions of fact arising under this statute of possession and payment of taxes for seven successive years, and good faith, (all of which are necessary to bring the case within the statute,) should be submitted to the jury, and to be by the jury decided. Has the plaintiff in error, by any evidence, brought himself within this statute? Has he shown, during any period of seven successive years, possession and payment of said lot 51, or any part of it? Has he shown good faith in himself in such possession, when his evidence shows that he was *subject to* the rights of the owners of said lot 51? In order to avail himself of this statute, he must bring himself clearly within its provisions. This he has not done. He has proven payment of taxes, but no possession during the time of his payment of taxes, nor has he showed good faith in the matter. But this was a question of fact for the jury, and the jury decided it adversely to the plaintiff in error. The plaintiff in error can certainly not find fault with the instruction of the court upon this statute, as it was more favorable for the plaintiff in error than the statute warranted. It is as follows: "4th instruction—If the defendant had been possessed of the lot in controversy, under a title adverse or in hostility to the title of those claiming under the act of 1823, for seven successive years, and had paid the taxes for that time, he might be protected under this statute."

Upon this instruction, the jury found for the plaintiff below, thereby saying that the defendant had not had possession for the seven years, during which period he paid the taxes on said lots.

There was no exception to the finding of the jury, and no motion for a new trial; consequently, even if the jury had found a verdict contrary to the facts, that questien could not be raised here. But we insist that the finding of the jury was in accordance of the facts, and that there were no facts before the jury, that would warrant a different finding, under the limitation laws of Illinois.

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